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APPENDIX

VOLUME I—(pp. 1-234)

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 10, 1980
CERTIORARI GRANTED JANUARY 21, 1980

In the Supreme Court of the United States

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Int'l Longshoremen's Assoc., AFL-CIO & Council of North Atlantic Shipping Assocs., et al.

Case Nos.: 5-CC-791, 5-CE-48, 5-CC-792, 5-CE-49, 5-CC-793, 5-CE-50, 5-CC-794, 5-CE-51

5.7.75 Charge filed in 5-CC-791

5.7.75 Charge filed in 5-CE-48

5.12.75 Amended charge filed in 5-CC-791

5.12.75 Amended charge filed in 5-CE-48

5.12.75 Charge filed in 5-CC-793

5.12.75 Charge filed in 5-CE-50

5.12.75 Charge filed in 5-CC-792

5.12.75 Charge filed in 5-CE-49

5.13.75 Charge filed in 5-CC-794

5.13.75 Charge filed in 5-CE-51

9.25.75 Order Consolidating Cases, Complaint and Notice of Hearing in 5-CC-791, 5-CE-48, 5-CC-793, 5-CE-50, 5-CC-794, and 5-CE-51, dated

10.1.75 Order Consolidating Cases Consolidated Complaint and Notice of Hearing in Cases Nos. 5-CC-792 and 5-CE-49, dated

10.7.75 Petitioners International Longshoremen's Assoc., AFL-CIO, et al.'s Answer in 5-CC-791, 5-CE-48, 5-CC-793, 5-CE-50, 5-CC-794, 5-CE-51, received

10.10.75 Acting Regional Director's teletype denying request for postponement of hearing in Cases Nos. 5-CC-791, 5-CE-48, 5-CC-793, 5-CE-50, 5-CC-794, and 5-CE-51, dated

10.10.75 Acting Regional Director's teletype in Case Nos. 5-CC-791, 5-CC-792, 5-CC-793, 5-CC-794, 5-CE-48, 5-CE-49, 5-CE-50, and 5-CE-51, dated

10.10.75 Acting Regional Director's Order Consolidating Cases Nos. 5-CC-791, 5-CE-48, 5-CC-792, 5-CE-49, 5-CC-793, 5-CE-50, 5-CC-794, and 5-CE-51, dated

10.14.75 Petitioners International Longshoremen's Assoc., AFL-CIO, et al.'s Answer in 5-CC-792 and 5-CE-49, received

10.15.75 Hearing opened

12.9.75 Administrative Law Judge's Order receiving Joint Exhibit No. 1 in evidence, and closing hearing

8.19.76 Administrative Law Judge's Decision issued

9.14.76 Administrative Law Judge's Errata, dated

9.13.76 Petitioners International Longshoremen's Association, AFL-CIO, its affiliated District Council and Locals Exceptions to the Decision and Recommended Order of the Administrative Law Judge, received

9.13.76 Petitioners Council of North Atlantic Shipping Associations and Hampton Roads Shipping Association's Exceptions to the Decision of the Administrative Law Judge, received

9.23.76 Charging Party Houff Transfer, Inc.'s Statement of Cross-Exceptions to the Decision of the Administrative Law Judge, received

8.12.77 Decision and Order issued by the National Labor Relations Board

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Int'l Longshoremen's Assoc., AFL-CIO & New York Shipping Assoc., Inc.

Case Nos.: 2-CC-1364, 2-CE-75 & 2-CC-1365

5.6.75 Charge in 2-CC-1364 filed

5.6.75 Charge in 2-CE-75 filed

5.7.75 Charge filed in 2-CC-1365

3.10.75 Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, dated

3.16.76 Puerto Rico Maritime Shipping Authority's and Puerto Rico Marine Management, Inc.'s request for an extension of time to answer the complaint, dated

3.19.76 Regional Director's Order Extending Time to Answer, dated

3.19.76 Petitioner Employer's Answer, received

3.25.76 Petitioner Union's Answer, received

4.1.76 Statement of Puerto Rico Maritime Shipping Authority, Puerto Rico Marine Management, Inc., Maritime Transportation Management, Inc. and Trans American Trailer Transport, Inc., dated

6.8.76 Regional Director's Order Rescheduling Hearing, dated

9.28.76 Regional Director's Order Rescheduling Hearing, dated

11.29.76 Petitioners' letter requesting postponement of hearing, dated

11.30.76 Regional Director's Order Rescheduling Hearing, dated

2.11.77 Petitioner Union's letter requesting hearing be rescheduled, dated

2.15.77 Regional Director's Order Rescheduling Hearing, dated

4.5.77 Petitioner Employer's Amended Answer, received

4.7.77 Petitioner Union's First Amendment Answer, dated

4.21.77 Regional Director's Order Rescheduling Hearing, dated

6.21.77 Petitioners' Application to Take Depositions, dated

6.22.77 Petitioners' Application and Demand for Production of Documents, dated

6.23.77 Regional Director's Order Amending Complaint, dated

6.23.77 General Counsel's Motion to Strike Petitioners' Affirmative Defenses, dated

6.27.77 Regional Director's letter denying Petitioners' request for production of documents and application to take depositions, dated

6.30.77 Petitioners' letter requesting review of Regional Director's denial of Petitioners' request for production of documents and application to take depositions, dated

7.6.77 Petitioner Employer's Reply to Motion to Strike Defenses and Cross-Motion to Dismiss Complaint, dated

7.11-77 Hearing opened

7.11.77 Petitioner Union's Opposition to General Counsel's Motion to Strike Petitioners' Affirmative Defenses, dated

8.5.77 Administrative Law Judge's Order rescheduling hearing, dated

8.22.77 General Counsel's Opposition to Petitioner Employer's Cross-Motion to Dismiss, dated

8.22.77 General Counsel's Reply Statement in Support of Motion to Strike Defenses, dated

9.12.77 Administrative Law Judge's Order granting General Counsel's motion to strike Petitioners' affirmative defenses and denying Petitioner Employer's motion to dismiss complaint, dated

9.15.77 Petitioners' letter requesting special permission to appeal the Administrative Law Judge's order striking all of Petitioners' affirmative defenses, dated

9.16.77 General Counsel's telegram opposing Petitioners' request for special permission to appeal Administrative Law Judge's Order, dated

9.16.77 Board's telegraphic order denying Petitioners' request for special permission to appeal Administrative Law Judge's Order, dated

10.6.77 Administrative Law Judge's Order rescheduling hearing, dated

11.2.77 Administrative Law Judge's Order rejected Petitioners' affidavits and exhibits attached thereto and advising they shall be placed in the rejected exhibit file, and cancelling the scheduled hearing and closing the hearing, dated

11.2.77 General Counsel's letter objecting to the receipt of the affidavit into evidence or to oral testimony by the witness Gohlke and request that this evidence be rejected and the hearing closed, dated

12.7.77 Stipulation entered into by the parties

12.22.77 Administrative Law Judge's Order approving the stipulation of the parties and transferring proceeding to the Board, dated

1.4.78 Board's Order Approving Stipulation and Transferring Proceeding to the Board, dated

1.27.78 General Counsel's Brief to the National Labor Relations Board, dated

1.31.78 Petitioner Union's Brief to the Board, dated

2.1.78 Petitioner Employer's Proposed Findings of Facts and Conclusions of Law and Supporting Memorandum of Law, dated

2.13.78 General Counsel's Reply Brief to the National Labor Relations Board, dated

5.30.78 Decision and Order issued by the National Labor Relations Board

BEFORE:

The Hon. LEONARD M. WAGMAN, Administrative Law Judge

APPEARANCES:

BRUCE D. ROSENSTEIN, Esq.

NLRB, Fifth Region, 1019 Federal Building, Hopkins Plaza, Baltimore, Maryland 21201, counsel for the General Counsel.

WILLIAM L. AUTEN, Esq.

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MARSHALL T. BOHANNON, Esq.

(Herbert & Bohannon) Suite 402, Plaza One, Norfolk, Va. 23510, on behalf of Tidewater Motor Transport Assoc. and Associated Transport, Charging Parties.

SIDNEY H. KELSEY, Esq.

(Kelsey & Kelsey) 1408 Maritime Tower, Norfolk, Va. 23510, on behalf of Hampton Roads District Council of the ILA and Locals 1970, 862, 1248, 846, 970, 1458, 1624, 1784, 1819 and 1840, AFL-CIO, Respondents.

THOMAS W. GLEASON, Esq.

17 Battery Place, New York, New York 10004, on behalf of International Longshoremen's Association, the Atlantic Coast District Council of the ILA and all other locals, Respondents.

C. P. LAMBOS, Esq.

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—and—

FRANCIS SCANLAN, Esq.

(Deasey, Scanlan & Bender, Ltd) Two Girard Plaza, Philadelphia, Pa., on behalf of Council of North Atlantic Shipping Assoc, Party to the Contract.

BRADEN VANDEVENTER, Esq.

(Vandeventer, Black, Meredith & Martin) 2050 Virginia National Bank Bldg, Norfolk, Va. on behalf of Hampton Roads Shipping Association.

* * * *

[52] MR. ROSENSTEIN: Okay. Let's start on page two of the Consolidated Complaint, Notice of Hearing with respect to the enumerated cases. As I understand it, pursuant to Respondent ILA's Answer, paragraph 1 in its entirety has been admitted. With respect to paragraph 2 on page 3, it has been admitted in its entirety. With respect to paragraph 3, it has [53] been admitted. With respect to paragraph 4, it has been admitted. With respect to paragraph 5, it has been admitted. With respect to paragraph 6, it has been admitted except that there are additional rules embodied in the contract and which General Counsel will so introduce into evidence. But the rules as paraphrased in the Complaint in paragraph 6 were taken from the rules on containers. Paragraph 8 is admitted. Paragraph 9 is admitted. Paragraph 10 is denied. Paragraph 11 is admitted. And the remaining paragraphs 12 through 22 were denied.

I believe Mr. Bohannon has called to my attention that I did not mention paragraph 7. That was the rules on containers which were excised from the contract; and, as I have indicated, that the Respondent has admitted that they are the rules, but also there are additional rules which are included in the contract itself.

Now, we could move to the other consolidated complaint 5-CC-792 and CE-49. Paragraph 1 is admitted; paragraph 2 is admitted in its entirety. Paragraph 3 is admitted. Paragraph 4 is admitted. Paragraph 5 is admitted. Paragraph 6 is admitted. Paragraph 7, the same stipulation that those rules are excised but there are additional rules contained in the contract which will be introduced into evidence. Paragraph 8 is admitted. Paragraph 9 is admitted. Paragraph 10 is denied. Paragraph 11 is admitted. Paragraph 12 through 22 is denied. [54] Do you need a repeat of any of those?

JUDGE WAGMAN: No thanks; that's all right.

MR. ROSENSTEIN: Now, I have not had the Answers as filed by Respondent Hampton Roads Shipping Association or Respondent CONASA. I would ask that the same admissions as Respondent ILA made also be made by CONASA, but I would have to defer to Mr. Lambos as to his position.

JUDGE WAGMAN: Mr. Lambos?

MR. LAMBOS: I stated earlier, Mr. Rosenstein and Your Honor, that CONASA would adopt the Answer of the ILA in its entirety.

MR. VANDEVENTER: The same is true for Hampton Roads Shipping, Your Honor.

JUDGE WAGMAN: Are you ready to put on a witness?

* * * *

[65] JACK W. MACE

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[67] Q Now, will you describe for us what a container is, please?

A A container, in terms used in this contract that we have with the International Longshoremen's Association, is a box at least 20-feet long in which cargo is stored for transportation on an ocean carrier.

Q Do they come in specific denominations of length?

A They do; 20's, 30's, 40's, et cetera, various combinations.

Q Now, I want you to specifically refer to the Hampton Roads area and ask you the first date when containers appear.

A A very few containers starting appearing at Hampton Roads in approximately 1965.

Q Now, I want you also to define, if you would, what a LCL load is, an LTL load and a consolidated container load.

A Basically, a consolidated container load would be that which a cargo in a container belongs to more than one consignee. Less than trailer load would be practically the same thing as [68] LCL, likewise.

Q Now, would you define for us what a full shippers load container is?

A A full shippers load would be a container which the contents belong to one single beneficial owner.

Q Now, I want you to refer to 1965 and ask you with respect to a full shippers load whether these containers when they were destined to a point more than 50 miles from the port area, were they stripped at the pier by deepsea ILA labor?

A That would be termed a house to house movement or a pier to house movement, and they were not stripped at the pier unless ordered so by the—ordered to do so.

Q Let's talk about your definition of a house to house movement. What does that mean?

A As an example, General Electric in Portsmouth would stuff a container of its own product for an ultimate destination to somewhere in Germany to the consignee's plant there and the box would not be stripped until it reached its manifested destination in Germany.

* * *

[69] Q Now, directing your attention to September of 1974, are you familiar with containers which were stripped by motor transport carriers within a 50-mile radius of the port area?

A Yes.

Q Is it not a fact that these were containers with full shippers loads?

A Yes.

Q And this would be under your definition of a house to house movement, is that correct?

A Yes.

* * * *

MR. LAMBOS: Yes. I think the record should indicate that Exhibit 2 is the Hampton Roads agreement for the period of October 1, 1968 to September 30, 1971; that Exhibit 3 is the Hampton Roads agreement between November 14, 1971 and [70] September 30, 1974; and Exhibit 4 is the Hampton Roads and Longshoremen's agreement for the period of October 1, 1974 to September 30, 1977.

MR. ROSENSTEIN: Let the record so reflect, as Mr. Lambos has stated.

JUDGE WAGMAN: There's no question about the authenticity of the contracts? I have a proffer of a sitpulation.

MR. LAMBOS: We would stipulate that these were the Hampton Roads Associations with the various ILA craft unions noted on the cover. With respect to the two contracts which are Exhibits 3 and 4 dealing with the collective bargaining portion relating to containers, we will stipulate that this is the agreement between CONASA and the ILA and is contained for convenience purposes within the booklet set forth in Exhibits 3 and 4.

MR. ROSENSTEIN: I'll stipulate to that.

JUDGE WAGMAN: Mr. Vandeventer, do you join in that stipulation?

MR. VANDEVENTER: Yes, we will join in that stipulation.

MR. GLEASON: Yes, we join.

JUDGE WAGMAN: And also Mr. Kelsey. Does everybody join in the stipulations? The Charging Parties?

MR. AUTEN: Yes.

MR. BOHANNON: Yes, sir.

JUDGE WAGMAN: The stipulation is received and General * * *

* * * *

[76] Q Well, can you give me any indication as to the exact point of time that the Tidewater Motor Truck Association was aware of the enforcement of the rules with respect to full shippers loads?

A I would say that members of the Association had knowledge certainly as far back as 1969.

Q Okay. And under what area are you contending that they—or contract provisions are you contending that they had knowledge?

A I would say the entire contract provisions on rules of handling of containers, inasmuch as there were violations going back to 1969.

Q All right. Refer to the contract, General Counsel's Exhibit 2 and turn to page 65. Now, are these the first times that the rules on containers were asserted in a contract that existed in the Hampton Roads area with the ILA?

A That's correct.

* * * *

[77] Q (By Mr. Rosenstein) Mr. Mace, did you testify in the Federal District Court proceeding before Judge Merige on September 17, 1975?

[78] A Yes.

Q And is it not a fact that I asked you whether or not on page 65 there were any provisions which related to the stripping of full shippers loads?

A I don't remember the exact wording of your question. We did talk about full shippers loads, yes. You asked me for definition of one, of such.

Q And is it not a fact that we reviewed the rules on containers and you informed me that there was nothing in the rules which specifically related to full shippers loads?

A I indicated full shippers loads were exempt from stuffing and stripping requirements unless ordered to do so—unless they were ordered to be stripped or stuffed.

* * * *

[81] Q The question reflects, on page 65, is there any provision in number one, two and three which specifically states that ILA has the right to strip full shippers loads at the pier area.

A It states that containers which are destined to a beneficial owner, full shippers loads need not be stripped at the pier area.

Q All right. Now, you talked about full shippers loads being exempt from being stripped at the pier area, is that correct?

A Yes, sir.

[82] Q All right. Now, let's first start out in 1965 when containers first came into the Hampton Roads area. Is it not a fact that containers which were destined to a point beyond a 50-mile radius of the port area were not stripped at the pier by deepsea ILA labor?

A Well, first, the containers that moved through the port in 1965 probably could be counted on your hands. There were a few containers, and there were no set rules in the port at that time. The numbers were just insignificant. Most of them were so-called Conex boxes.

Q But you said that containers did come in in 1965, is that correct?

A There were a few that passed through the port.

Q All right. If they were a full shippers load destined to a beneficial owner more than 50 miles from the port area, is it not a fact that they were not stripped at the pier by deepsea ILA labor?

A Unless they were ordered to be stripped.

Q Okay. Now, let's get into that. When you say, unless they were ordered to be stripped, is it not a fact that this would occur when the container was in transit and the container was changed from a house to house movement to a house to pier movement?

A This could be a true example, yes.

Q So if the container remained a full shippers load, house [83] to house movement, is it not a fact in 1965

that it was not stripped at the pier by deepsea ILA labor?

A That's correct.

* * * *

[90] Q Now, let's go back to review 1965, 1966 and 1967. If you had containers similar to the containers within this case, is it not a fact they would not be stripped at the pier by deepsea ILA labor?

A We did not have any rules on the handling of containers during those years.

Q To your knowledge, if you had those types of containers, is it not a fact that they would not be stripped at the pier by deepsea ILA labor? If you know.

A It would be only an assumption. I don't know.

Q In other words, you're not sure because there wasn't rules on containers.

A That's right.

Q And you don't know from your own personal knowledge?

A That's correct.

Q Okay. Let's go to the 1968 contract, again, if you would. Keeping in mind the definition that you have given as [91] to the types of containers involved in this case, tell me if the rules on containers in 1968 specifically state that the ILA would strip those types of containers which you have just defined to the Court.

A I think the contract is pretty clear stating which containers are to be stuffed and stripped at the pier and which would move on.

Q Is there anything that you see in the rules which specifically gave the right of the ILA to strip full shippers loads destined to a beneficial owner more than 50 miles—excuse me, going to the beneficial owner beyond the 50-mile radius?

A No.

Q Now, turn to General Counsel's Exhibit 3, the 1971 contract. Turn to page 66. Now, is it not a fact that those rules in the 1971 contract are identical to the rules on containers in the 1968 contract?

A That is correct.

Q Once again I ask you, keeping in mind the definition that you have told us with respect to the containers involved in this case, is it not a fact there is nothing in the rules on containers which state that the ILA can ship full shippers loads going to a point more than 50 miles from the port area?

A No, there's nothing in the rules.

* * * *

[92] Q Now, is it not a fact that ILA used Rule 1(a)(3) and 2(b)(2) as the rules which they alleged were the violations against the employer members of the Hampton Roads Shipping Association?

A That is correct.

Q And that was negotiated for the first time in June of 1974 to be inserted in the October 1, 1974, contract?

A Rule 1(a)(3) in the '74 contract is new wording; however, the concept did not change. It says, "for containers going [93] to a point outside of the 50-mile radius not be stripped."

Q Okay. So the concept you're saying is that when a full shippers load comes into the pier that it is not stripped by deepsea ILA labor when it is going to a point more than 50 miles beyond the port area.

A That's correct.

* * * *

[96] Q Now, within those rules, there is a 30-day warehousing clause rule known as 2(b)(4), is that correct?

A That's correct.

Q And that's in the October, 1974, contract?

A That's correct.

Q Would you for the Court describe what that 30-day warehousing clause was?

A Basically, it says on inbound cargo in the normal course of movement of such cargo, it may be warehoused for a period not less than 30 days on which normal warehousing charges are paid; and the container then would be exempt from being stripped at the pier and may be stripped at the warehouse.

MR. ROSENSTEIN: Rule 2(b)(4), Your Honor, in the 1974 contract.

Q (By Mr. Rosenstein) Now, during the period of time of the suspension on the rules on containers with respect to the 30-day warehousing clause, is it not a fact that the containers that would normally go into the warehouse were being stripped at the pier by deepsea ILA labor?

[97] A Well, they were not going to the warehouse. Whether they, in fact, were being stripped at the pier, I don't know; but that operation was suspended.

* * * *

[98] Q All right. Next, you mentioned that, upon order, full shipper loads might be stripped at the pier prior to 1968. If you know, what circumstances would call for that stripping?

A I guess if the cargo changed ownership during ocean transfer or any number of reasons.

Q Would there be any possible reason, other than the fact that all of the cargo in that container was not going to the same place?

A You could say anything is possible, I guess.

Q Well, can you identify another reason that that container would have been stripped?

A I can't think of any particular reason right offhand.

[99] MR. AUTEN: I have no other questions, Your Honor.

JUDGE WAGMAN: Mr. Bohannon?

MR. BOHANNON: Yes, sir, I do have one or two.

Q (By Mr. Bohannon) Mr. Mace, up until the 1974 contract, couldn't it be said that any full shipper load containers coming into Hampton Roads went to their destination without being stripped?

A Yes, sir.

Q All right. Regardless of their destination, if it were a full shipper load, it was not stripped at the piers?

A That's correct.

Q Up until '74?

A Even—

Q Even now?
A Even now, yes. Right.
Q That's my next question. Even now, the bill of lading or the shipping documents showed it to be a full shippers load, it is not stripped at the piers, is it?
A Right.
Q So along that line in the history of containers, have full shipper loads ever been stripped at the piers unless upon direct orders of the owner or someone else?
A I do not know of any cases.
Q Now, you testified in answer to Mr. Rosenstein's questions about a meeting you had with Mr. McNeil that [100] represented the Tidewater Motor Transport Association. Why was there a meeting?
A I did not personally attend the meeting. The Steamship Trade Committee had a meeting, and they discussed the problems that they had with the various motor carriers over the years. A new contract had just been negotiated; and, again, the steamship agents felt like they ought to advise the motor carriers of the terms and conditions of the new contract. So, therefore, an informal meeting of subcommittee level was set up with Mr. McNeil and several of his members. I did not attend the meeting; but that was the purpose of the meeting, to apprise them of this new contract.
Q And that was the first such meeting, was it not? And the only such meeting?
A To my knowledge, yes, a meeting as such, per se.
Q And it could be fairly said that it was occasioned by your new '74 contract?
A Yes.
Q And that did have the container rules completely rewritten?
A I wouldn't say completely rewritten. Similar.
Q Well, the language is different in every paragraph?
A Right.

* * * *

CROSS EXAMINATION

[102] Q This case is about containers that are short-stopped at a trucking station where the cargo is removed

not by the consignee's employees but by the truckers' employees, is that correct?
A That's why the violation was imposed, yes.

* * * *

[106] Q (By Mr. Lambos) Mr. Mace, would you please tell the Court in your own words what the practice was before the Dublin rules with respect to a container destined to go to a warehouse within the port of Hampton Roads?
A If such container did not go to a consignee's facility within a 50-mile radius—a beneficial owner's facility within a 50-mile radius, then, it was termed a stripper. It had to be stripped.
[107] But if the container was destined to go to the beneficial owner's facility within a 50-mile radius, then, it was not a stripper. It did not have to be stripped.
But if the container were to go to a consolidator or a broker or a forwarder's facility or what-have-you, then, the container had to be stripped at the pier by ILA labor.

* * * *

[115] Q (By Mr. Lambos) Mr. Mace, the Hampton Roads Shipping Association is one of the constituent members of CONASA, is it not?
A That is correct.

* * * *

REDIRECT EXAMINATION

[122] Q (By Mr. Rosenstein) Mr. Mace, with respect to a full shippers load, is it not a fact that by the fact that ILA does not strip those containers at the pier, that they receive a royalty for those containers?
A That is correct.
Q All right. Now, what was the reason for inserting that royalty and why does ILA get that royalty?
A The royalty was because it was negotiated in the contract because containerization was a form of automation and, thereby, reducing the amount of hours in which, say, a ton of cargo would be handled via containerization as opposed to break bulk handling.

Q Now, would ILA on a 20-foot full shippers load going to a beneficial owner at its manifested destination obtain a royalty?

A They would.

Q And would that be so much per ton?

A That is correct.

Q And would it be between 40 and 50 dollars possibly per container?

A It's conceivable.

* * * *

[133] Q That's my point. If they were stripped within the 50-mile radius, they would have been charged under Rule 1(a)(3) and 2(b)(2). If they were stripped outside the 50-mile radius, they would have been charged under the evasion principles, is that correct?

A Yes.

* * * *

[137] Q But now, I'm talking specifically about a full shippers load which is going to a single consignee and the union charges that there is false documentation. Now, which document did they say was false?

A Well, if the argument was presented in defense of the container being stripped, that it was stripped at a proper geographic point; and that geographic point was different than its manifested destination.

Q All right. But if it was stripped in Richmond, that was not a proper geographic point, was it?

A If it wasn't in agreement with the manifest and delivery order.

Q In fact, the ILA's contention wasn't that it was stripped at an improper geographic point but that it was stripped by the wrong people?

A It thereby wouldn't be a true house to house movement, if it wasn't stripped by the proper people, yes. It was stripped at a place, as the contract states, a freight [138] forwarder, or a consolidator or a warehouse or broker. These particular points or these particular operations are not acceptable points where containers may be stuffed or stripped.

Q All right. In any case where a violation was alleged, would the shipping companies necessarily have

known that the motor carrier intended to pull the container to his terminal in Baltimore or within the 50-mile area and strip it?

A I'd say that in 99 percent of the cases the ocean carrier would have no knowledge of this. Once that container leaves the terminal, he really doesn't have any knowledge of any—

Q All right. In 99 percent of those cases, how can it be that the shipping company falsified any document?

A It's not always the case. I haven't seen these documents, but I don't think it's always the case that the shipping company or ocean carrier, that is, would be falsifying any documents.

It's a relationship of where the container is stripped and where the documents state that the container should be stripped.

* * * *

[140] All I want to know is what was the practice with respect to containerized freight and the stripping of those containers where the cargo was supposed to go beyond the 50-mile radius; and I want to know what paragraph 2 on page 65 and its apparent successor in this subsequent contract, you know, where did they all start. It's a question of palentology.

MR. LAMBOS: We intend to present some paleontology.

JUDGE WAGMAN: I want to know where did it all come from.

MR. GLEASON: Your Honor, may I ask the witness a couple of questions?

JUDGE WAGMAN: Certainly. Mr. Mace is a patient man.

RECROSS EXAMINATION

Q (By Mr. Gleason) Mr. Mace, I'm a little confused on this shippers load and the 50-mile radius. Now, can you tell me the difference between a shippers load inside the 50-mile radius and inside the 50-mile radius?

A There is none, basically.

Q So the same rules apply to the shippers load, if it's in the 50-mile radius or its outside the 50-mile radius?

A That's correct.

Q And if a container that's destined across the street from the pier and is a shippers load going to the shipper and [141] it goes to a truckman who ships it, is that a violation?

A If it goes to the trucker, yes.

Q Okay. The same thing. Has it been the practice in this port that if a container went outside the 50-mile radius—was destined to go outside the 50-mile radius and went to the trucker, whether it was inside the 50-mile radius or outside the 50-mile radius, was that a violation?

A If it went to the trucker, it was a violation.

Q Regardless of where it went?

A That's correct.

* * * *

[148] MR. BOHANNON: I thought we were approaching this from a different viewpoint, Your Honor. I'm trying to show that the documentation is what controls who strips. Not what happens to it after it leaves the pier.

JUDGE WAGMAN: What's been the practice?

MR. BOHANNON: That's been the practice.

Q (By Mr. Bohannon) Mr. Mace, let me ask you again. If the documentation on a container shows that it is to go to the beneficial owner directly or the bill of lading says this goes to the J.C. Penney Company in Greensboro, North Carolina, it's a full container load. Now, that's a full shippers load. That's what we are talking about here today?

A Right.

Q Such a container has never been stripped by ILA labor, has it?

A Going back to your question, you said, "If this." What are you talking about, the container in tact? "If this goes to."

[149] Q No, I didn't say that, sir.

A If the container in tact goes to—

Q No, let me ask the question again.

A Okay.

Q I'm talking about the documentation. We are not talking about what happens to it after it leaves; we are

talking about as it comes to the pier what the document shows. It shows it's going to J.C. Penney in Charlotte or Greensboro, wherever their warehouse is down there; and that container goes to the truck line that picks it up, invariably, does it not?

A Yes.

* * * *

[152] Q (By Mr. Auten) Mr. Mace, let me ask you one thing. I'm not talking about who is entitled to the work according to the [153] rules. I'm not talking about who should do it. I'm not talking about who may be in violation of the rules. I want to know if anyone other than these motor carriers stripped full container loads destined to a single consignee.

A I'm sure that the ILA from time to time has stripped a full container load.

Q Do you know that as a fact?

A If they were ordered to do so, yes.

Q Now, why would they have done so, sir?

A Well, for any number of reasons. The option of the consignee. Maybe the goods were going to Georgia and he found a local consumer for the goods and he wanted the goods stripped at the pier for local distribution rather than distribution in Georgia.

* * * *

Q (By Mr. Lambos) Mr. Mace, assuming the question just asked of you, assuming that a carrier of the Hampton Roads Shipping Association had a so-called full shippers load destined for Cincinnati and the trucker came up to the pier and told your carrier member that he was going to take it down the street to a trucking station and do it, would not your carrier member instruct the ILA to strip that container?

MR. ROSENSTEIN: Objection; that's hypothetical.

[154] A That's correct.

JUDGE WAGMAN: Overruled.

* * * *

[155] (By Mr. Auten) This, again, Mr. Mace, is addressed to how you folks interpreted the contract which

you had back in 1968. You looked in the booklet—and this is page 65 of the 1968 and 1971 collective bargaining agreement. And you looked in the booklet in the first full paragraph at the top of the page and it says that the rules on containers apply only to containers meeting criteria that are enumerated one, two three right below that, is that correct?

A Yes.

Q All right. The first of those criteria says, "Containers owned or leased by employer signatory members including containers on wheels which contain LTL loads and consolidated full container loads.

A Uh-huh.

Q That paragraph does not apply to any full shippers load, does it, sir?

A No, sir.

Q All right. Number two says, "such containers." What did you take such containers to mean, did you take that to refer back to number one?

[156] A Any such containers.

Q Does it refer back to number one?

A It could.

* * * *

[167] CLETUS E. HOUFF

was called as a witness and, having been first duly sworn, was examined and testified as follows:

JUDGE WAGMAN: Please have a seat, sir, and state your name and spell it, please.

THE WITNESS: C. E. Houff, H-o-u-f-f.

DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Houff, will you state your name and address for the record, please?

A C. E. Houff, Weyers Cave, Virginia.

Q And where are you employed, sir?

A At Houff Transfer, with headquarters in that city.

Q And what is your capacity?

A President.

Q And what is the business of Houff Transfer?

A Motor common carrier.

Q Do you have facilities located throughout the United States?

[168] A In five states.

Q Do you have a facility in Baltimore, Maryland?

A We do.

Q Do you have one in Norfolk, Virginia?

A Yes.

Q Now, are you the individual who is a Charging Party in some of these cases?

A Yes.

Q Now, would you tell me the approximate number of employees that you have at your Baltimore facility and the Norfolk, Virginia, facility?

A At Baltimore, we have 14 employees. At Norfolk, we have five.

Q Are any of the employees at either Baltimore or Norfolk represented by a labor organization for collective bargaining purposes?

A No.

Q Now, how close is your Baltimore faciilty and Norfolk facility to the respective port areas?

A At Baltimore, we are approximately three miles from the Dundalk terminals. In Norfolk, we are three blocks from the Lambert Point dock.

Q And Lambert Point dock is in the Norfolk area?

A That is correct.

Q Now, do you utilize containers in the transportation of [169] goods in interstate commerce?

A Yes.

Q Would you describe how you utilize a container?

A We pick the containers up from the piers, take them to our terminals, weigh them; and, if they are overweight, they are transferred to the trailers of Houff Transfer. In some cases, they may not be overweight and alsc be transferred to the trailers of Houff Transfer.

* * * *

Q What are the size of the containers that you would pick up at the pier?

A 20-foot and 40-foot lengths. Some 35's, but mostly 20- and 40-foot.

Q Now, how is Houff Transfer notified that they are going [170] to pick up a container?

A The broker or agent phones you that it has one container or several containers destined to some consignee; and he then provides you with papers, delivery receipts or dock receipts which you must have in your possession and carry it to the piers, which is authorization for the piers to tender these containers to Houff Transfer.

Q Well, would you describe specifically what a delivery order is, please?

A It's a piece of paper showing where the shipment originated from, who it's destined to, what the shipment consists of, the weight, the container number; and, in some cases, the seal numbers that are attached to the container.

* * * *

[173] Q And will you describe how motor transport carriers like Houff would utilize the bill of lading?

A A bill of lading is issued by the shipper covering whatever shipment he may be shipping at the time, and it is a document by which the shipment is received; and, from this bill of lading, a freight bill is made by Houff Transfer providing essentially the same information that is covered on the bill of lading.

* * * *

Q (By Mr. Rosenstein) Now, I direct your attention to the Baltimore port area, and I ask you when did containerization begin.

A It began, to my knowledge, around 1965.

Q That's in the Baltimore area?

A In the Baltimore area.

Q Now, you have already defined a full shippers load. I want you to tell me in 1965 what Houff Transfer did when they [174] picked up a full shippers load at the pier area in Baltimore.

A We were requested by either an agent of Baltimore or perhaps a consignee itself to go to pier so-and-so and

contact whatever steamship the company may have the container and pick up the same and deliver it—deliver the merchandise to the consignee.

Q Now, what is the distance in miles from the pier area that most of your shipments are destined?

A It would range from a minimum of 150 miles to a maximum of 450 miles.

Q When you picked up a full shippers load at the pier, was the seal in tact?

A In most cases.

Q Had the full shippers loads been stripped by deepsea ILA labor at the pier?

A No.

Q Directing your attention to the Norfolk area, when did containerization commence?

A At about the same time, as I recollect.

Q Will you describe, in the Norfolk area, how you picked up a full shippers load at the pier area?

A In the Norfolk area, the brokers would issue the instructions. In some cases,—and I'm talking about 1965—we would be directed by the consignee to contact whatever broker may be handling the shipment. And once the contact [175] was made, you may have had a document to carry to the pier or it may have been done by a telephone conversation, to go to the pier and get container so-and-so; and there the documents would be issued to you at the pier.

Q Now, when you picked up a container of a full shippers load at the pier in Norfolk, was the seal in tact?

A In the majority of the cases.

Q All right. Would you describe for me when the seal would not be in tact?

A Occasionally, the seal may be broken by customs; and, on some occasions, it may have gotten broken in transit. It is a policy to check the seal numbers before the containers were picked up.

Q Were containers of full shippers loads in 1965 stripped at the pier by deepsea ILA labor?

A No.

Q Now, let's go to the year 1966 for both Baltimore and Norfolk. Was the procedure the same as you described for 1965?

A Yes.

Q Were the containers stripped at the pier by deepsea ILA labor?

A No.

Q And you're talking about full shippers loads?

A Correct.

Q In 1967, in Baltimore and Norfolk, were the containers [176] stripped at the pier—full shipper load containers by deepsea ILA labor?

A No.

Q In 1968, for both Baltimore and Norfolk, were the containers stripped at the pier—full shippers loads—by deepsea ILA labor?

A No.

Q In 1969, the same question.

A No.

Q In 1970?

A No.

Q In 1971?

A No.

Q 1972?

A No.

Q 1973?

A No.

Q 1974?

A No.

Q 1975?

A No.

Q Is there any method in which a consignee—and that's the beneficial owner—can require a container to go through in tact to the final destination?

A Yes.

[177] Q How?

A By requesting exclusive use of the equipment.

Q What is exclusive use of equipment?

A It means equipment will move through with whatever merchandise that may be on it without anything

being added on to it and it must be expedited. In other words, once you receive it, it must keep moving.

Q From 1965 to the present date, has Houff Transfer ever had exclusive use of equipment requested?

A Certainly not over two or three times, if ever. I recall one shipment that may have been a container. I'm not real sure; but it's very rare that that situation, because there is a penalty assessed to the consignee and higher transportation costs.

Q Directing your attention to February 19, 1974, I ask you whether or not you picked up some containers on that date.

A Yes.

Q Where did you pick them up and what containers did you pick up?

A I picked them up from the Dundalk Marine Terminals from United States Lines destined to—

Q How many containers?

A Two.

Q Did you pick up other containers?

A I'm not sure, on that particular date.

[178] Q Did you pick up any containers from Lavino Shipping?

A Yes.

Q Was that in that same general time frame?

A Yes.

Q What type of containers were these three containers which you picked up at the pier area?

A 20-foot containers.

Q And what kind of loads did they contain?

A Two containers from United States Lines contained silicone with the total weight of 78,000 pounds on the two containers. The container from Lavino was drums of picoline with the weight of about 38,000 pounds, 80 drums.

Q Were these containers described as full shippers loads?

A Yes.

Q All right. What did you do from the point that the broker told you that you were going to pick up these containers, that you had been designated as the carrier?

A Picked the containers up from the steamship companies, took them to the Baltimore terminal, transferred them to Houff trailers.

Q What specific reasons did you use to open the seal and strip those containers?

A The number one reason was they were overweight; they couldn't be legally pulled over the highways of Virginia and West Virginia.

* * * *

[179] Q Now, do you want to explain those weight laws in relationship to the container that you picked up at the Baltimore pier area and stripped at your terminal?

A The containers which we picked up in Baltimore were all three 20-foot containers; and they show the distance between the first and rear axle and the maximum weight allowed under those allocations.

Q So what determination did you make with respect to that chart on the three containers which you picked up?

A That they were all overweight.

Q And, therefore, what did you do?

A We unloaded them and transferred them to Houff trailers.

Q And is this to comply with the State of Virginia's rules and regulations on motor transport?

A Yes.

* * * *

[182] Q (By Mr. Rosentein) Now, you said the first reason was as a result of the distribution of load for stripping a container. Would you continue and tell me if there were any other reasons that you determined it necessary to strip the three containers?

A The second reason was that, being a 20-foot trailer or 20-foot container loaded to the roof, going through the mountains of West Virginia, it's a very unsafe operation, particularly in the wintertime. U.S. Highway 60, which is the highway that Alloy is located on, is one of the most obsolete and mountainous roads in the Continental United States.

The third reason is that when we unloaded the container and we turned it back to the steamship lines, we saved the rental cost on the container.

[183] Q Now, the rental cost, is that under your equipment interchange agreement which was introduced as General Counsel's Exhibit 15?

A It is.

Q And do you pay the steamship line for the use of those containers?

A Yes.

Q Those containers are owned by whom?

A They pay the steamship lines for them. Some of them own them and some of them lease them from the container people.

Q Houff does not own the container that you pick up at the pier?

A Under no conditions.

* * * *

[184] Q (By Mr. Rosenstein) Mr. Houff, without going through the documentation, would you relate what actions took place as a result of your stripping full shippers loads at your facility in Baltimore, Maryland?

[185] A The steamship companies presented us with bills totaling $3,000.00, claiming fines of some sort that they had encountered and asked that Houff Transfer reimburse them in these amounts; and, since Houff Transfer chose not to reimburse them, then, the steamship lines cancelled the interchange agreement.

Q Okay. Did the steamship companies tell you the reasons that they were fined?

A It said because we had unloaded the containers. Houff Transfer unloaded the containers at our terminals and put it on Houff equipment.

Q Now, will you describe once again the consequences of your equipment interchange agreement being cancelled with Lavino Shipping and U. S. Lines?

A Once the equipment interchange was cancelled, then, the steamship lines refused to give you any more containers, because they said they didn't have an effective interchange agreement.

Q Since the date of the cancellation of the U. S. Lines equipment interchange agreement, had Houff been selected as the motor transport carrier for full shippers load?

A Many times.

MR. LAMBOS: I didn't hear the last question and answer.

Judge Wagman: Do you want to read that back, Mr. Reporter?

MR. ROSENSTEIN: The answer was: "Many times."

[186] MR. VANDEVENTER: What was the question?

MR. ROSENSTEIN: The question was: After the cancellation of the equipment interchange agreement by Houff and Lavino, had Houff been selected as the motor transport carrier to pick up full shippers loads?

Q (By Mr. Rosenstein) Now, who would select you for the picking up of these containers of full shippers loads?

A The consignees and the brokers, in some instances.

Q Now, has this occurred in the year 1975?

A Yes.

Q And I show you General Counsel's Exhibit 25, and I ask you to examine that briefly.

A This is a letter by the consignee requesting the use of Houff Transfer on two United States Lines containers covering baler twine to move from Norfolk, Virginia, to Staunton, Virginia. Also, attached is a letter from the United States Lines to the consignee saying that Houff Transfer had not signed an interchange agreement with our company and we could not release our equipment to Houff.

Q And the date of that was January, 1975, is that correct?

A That's correct.

Q Now, let's go back, Mr. Houff, to the point that you pick up the full shippers load at the pier area. I show you General Counsel's Exhibit 16, the uniform straight bill of lading. And I ask you whether there is

anything in that [187] document that precludes you from stripping a container at your facility.

A None whatsoever.

Q I show you what has been marked as General Counsel's Exhibit 18, the delivery order. And I ask you whether or not there is any provision which preclude you from stripping the container at your facility.

A None whatsoever.

Q The delivery order covers what, specifically?

A It covers two United States Lines containers with calcium silicium moving from the Dundalk Marine Terminals to Union Carbide at Alloy, West Virginia.

Q Is there anything on that delivery order by the consignee precluding you from stripping those containers?

A No.

Q Was there any indication by the broker on that delivery order precluding you from stripping the containers at your facility?

A No.

Q Is there anything on that order by the shipping lines which precludes you to strip that container at your facility?

A No.

Q On the three containers that you picked up, two from the U. S. Lines and one from Lavino, was there an exclusive use of equipment requested?

[188] A No.

Q I show you what has been marked as General Counsel's Exhibit 15, the equipment interchange agreement. I ask you if there is anything in the equipment interchange agreement between Houff and U. S. Lines that precludes you from stripping a full shippers load at your facility?

A No.

Q Mr. Houff, are there any other documents which you utilize to pick up a full shippers load at the pier area?

A No.

Q So the bill of lading and the equipment interchange agreement and the delivery order are the documents that you utilize?

A That's correct.

Q Is there any other document that you have knowledge of that specifically precludes you to strip full shippers loads at your facility?

A Not to my knowledge.

MR. ROSENSTEIN: I have nothing further of this witness.

MR. AUTEN: Your Honor, I have one question.

JUDGE WAGMAN: Go ahead.

FURTHER DIRECT EXAMINATION

Q (By Mr. Auten) Mr. Houff, in your testimony, you went into reasons why you might strip containers containing full shippers loads going to a single consignee. As I recall, [189] three of them, the weight rules imposed by the states was the first; the second was safety reasons in addition to the weight rules; and the third was the economy, specifically having to do with the rental charge, which was charged by the shipping company.

Now, in addition to those reasons, are there any other operational factors that might suggest to you that a container be stripped?

A Yes. On some containers, the fifth wheel pin located on the chassis will not prevent or will not permit the use of a tandem axle tractor in the movement of that container. In other words, the rear wheels will hit the chassis and, therefore, you are not able to use a tandem axle tractor. If you did move the 20-foot container, there's always the problem of trying the load the thing back, because you only have half the amount of floor space in that that you would have in regular—or less than half the floor space that you would have in regular common carrier equipment, or the equipment of Houff Transfer.

If you are not able to load it back and it has to sit around for days or weeks, it's costing money. Again, it comes back to the cost of the—

Q Just for purposes of clarity, describe what you mean by loading back.

A In other words, if it would be pulled to the consignee's [190] destination—and we will use Alloy, West Virginia as an example—and then get that equipment

loaded back into the Baltimore area, it's practically impossible to get a pay load on it. In other words, even if you did load it, it would move for about half of the revenue that should have been on it; and if you only move it for about half of the revenue, then, it's a losing proposition.

MR. AUTEN: Thank you, sir.

JUDGE WAGMAN: Mr. Bohannon?

MR. BOHANNON: No.

JUDGE WAGMAN: Mr. Lambos?

CROSS EXAMINATION

Q (By Mr. Lambos) Mr. Houff, you have been in business in Baltimore since 1946, haven't you?

A Yes, sir.

Q And you have been in business in the Port of Hampton Roads since 1952?

A I would say that's correct.

* * * *

[198] Q Now, who made the decision on February 19, 1975, that the containers were overweight?

A Our central dispatch in Weyers Cave.

Q Where is central dispatch?

A In Weyers Cave, Virginia.

Q And when was that decision made?

A As soon as the trailers were waiting.

Q You mean the weight of the containers wasn't known until the containers were actually picked up and weighed in your facility?

A That's correct.

* * * *

[210] A For the last year, our business has been way off. U.S. Lines cut off and they were the biggest shippers of containers in the territory which we serve. Lavino would not ship any more by way of Houff.

And I'd say we moved well over a hundred.

Q A hundred containers?

A Right.

Q Since last year was somewhat abnormal, take the year before that. How many would you have moved the year before that?

A Several hundred.

Q Now, when you say several hundred, you are talking about steamship company containers?

A Right.

JUDGE WAGMAN: The year is what, 1974? Or are we talking about a year back from today and this next year, or is it two years back from today?

THE WITNESS: I'm talking about a year beyond the time when U.S. Lines and Lavino cut us off.

JUDGE WAGMAN: When was that, January?

MR. LAMBOS: That was February of 1974.

MR. AUTEN: For purposes of clarity on the record, I think it was midsummer 1974 when those documents show that the interchange agreements were cancelled.

* * * *

[212] Q (By Mr. Lambos) What other work do you handle at the Norfolk and Hampton Roads terminals?

A Outside of the container business?

Q Outside of steamship company container business.

A Well, we handle for about a half a dozen. GSA, I would assume, is our biggest shipper. We handle for Texaco, Southern States, Chase Bank, several others.

Q Now, these are movements in the domestic traffic as compared with the foreign commerce of the steamship company containers, is that not correct?

A Yes.

Q Is most of your business, in fact, not domestic business?

A No, we have more domestic business than we do container business.

Q Substantially more, in fact?

[213] A I wouldn't say it was substantial; but we have more domestic than we do container.

Q In Norfolk, you indicated that you have five employees.

A Right.

Q Could you tell us how many of those employees are supervisory and how many actually perform loading or unloading of container work?

A One supervisor has to do the loading and unloading.

Q Do any of these remaining four employees perform office work?

A One may do a little on occasion; but his primary function is to load and unload. In addition to that, we fill in with over-the-road men, helping them to do loading and unloading.

Q How many manhours does it take to load a container? In other words, take the cargo out of the 20-foot steamship box and put it into one of your own boxes.

A From a half to an hour.

Q From a half an hour to an hour?

A Right.

Q With how many individuals working?

A One.

Q One individual?

A Right.

Q Would that one individual be operating a machine of some type?

[214] A A forklift.

Q He would be operating a forklift. This one individual would take a half an hour to an hour?

A Oh, it's been done in that length of time.

Q And you would say that the two U. S. Line containers required about one hour of labor to move the 78,000 pounds from the two containers into your equipment?

A That's correct.

* * * *

[218] Q (By Mr. Kelsey) Mr. Houff, would you tell us, please, whether in 1965 Houff Transfer Company stripped any containers at any piers in Norfolk or Hampton Roads? On the piers.

A No, we did not strip any on the piers.

Q In 1966, did Houff Transfer strip any containers on the piers anywhere in Hampton Roads?

A Houff Transfer did not strip any containers on the piers.

Q At any time, from 1965 through the present date, is that correct?

A That's correct.

* * * *

[222] Q (By Mr. Gleason) When did you first handle containers for U. S. Lines?

A Oh, I would assume sometime prior to signing this agreement.

Q When was the first time you signed the agreement with U. S. Lines?

A March 18, 1970.

Q So that was the first time you started actually handling containers for U. S. Lines?

A In most cases, we handle some containers before we have an interchange agreement; and the interchange agreement follows the handling of some of the containers.

Q Now, with reference to your terminal operation in Norfolk and Baltimore, did the ILA ever approach you about [223] organizing your employees?

A No.

Q Did the ILA, to you knowledge, speak to you about your interchange agreement and pressuring U. S. Lines to cancel it?

A No.

* * * *

MYLES EVERETT BILLUPS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

[224] DIRECT EXAMINATION

* * * *

A Yes, I am.

Q And, at that time, were you president of the Hampton Roads District Council, which you still are today?

[225] A I still am, yes.

Q And you succeeded on the death of Mr. Alston to International Vice President?

A That's correct.

Q Will you refer back to page 64, of the 1968 agreement?

A Okay.

Q Now, number one, under containerization, it speaks, does it not, only with respect to containers containing LTL loads or consolidated full container loads?

A It goes a bit further. It says, "which are destined for or come from any person, including a consolidator, who stuffed containers of outbound cargo, or a distributor, who strips containers of inbound cargo, and including a forwarder."

Q And that includes containers containing LTL loads or consolidated full container loads, is that correct?

A That what I just read does.

Q Now, that contained in number one in parentheses is the same identical language which is contained on page 65 in (a) (2), is that correct?

A A container which comes from—(a) (2)—

Q You don't have to read it. Just compare what's on page 64 in parentheses with the (a) (2) on page 65.

A Yes.

Q And, therefore, the rules on page 64 and on page 65(a) (2) apply to LTL and consolidated full container loads, is [226] that correct?

A In the context just outlined.

Q That is correct. Now, if you will turn to page 68—Excuse me. Page 66 of the agreement. If you will look under (c) (1), it refers to (a) (3), which is the 50-mile radius clause, is that correct?

A That's correct.

Q And it talks as to LTL movements only, is that correct?

A Speaking to LTL, container loads, yes.

Q Now, if you will refer to page 68, paragraph 8, it states that if the purpose of protecting and preserving the present work jurisdiction of longshoremen and all their deepsea ILA crafts over any containers loaded with LTL cargo or consolidated full container loads as defined herein. So paragraph 8 talks about—

A It stops, but I don't see a period behind herein. It says, "herein is not accomplished by the provisions of these rules on containers, then, either party shall have the right to renegotiate these provisions or any part thereof by giving notice to the other party."

Q It speaks, however, does it not, with respect to LTL cargo and consolidated full container loads, is that correct?

A That's correct.

Q In the 1968 agreement, there is nothing specifically which deals with full shippers loads in the rules on [227] containers, is there?

A Well, the references to the ones that you made back in 2(a), 2(b), the full container load, they were giving the exceptions here to the rules.

Q Mr. Billups, you—

A At that time, in 1968, full shippers loads going to a beneficial owner's own place within or without the 50-mile radius was not stripped by ILA labor.

Q They were exempt, correct?

A At that time, yes.

Q Okay. So deepsea ILA labor in 1968 did not strip a full shippers load at the pier area when it was going to a point either within 50 or beyond the 50-mile radius of the pier area?

A To a beneficial owner or qualified shipper, at his own installation.

Q Now, by contrast, didn't you arrange for a royalty payment as a result of not stripping full shippers loads at the pier area which you would receive on each container?

A On each container that was permitted to move on a house to house move, yes.

Q And that would be approximately forty to fifty dollars per container that would go into a special fund for Longshoremen?

A Not necessarily so. It depends on the tonnage. It was [228] $1.00 per ton for a container at that time that was off loaded off of a full container ship, it was a dollar per ton; it was less on a partial container ship.

Q All right. Now, if you will refer to General Counsel's Exhibit 3 and turn to page 66.

A Okay.

Q Now, in comparing Rule 1 in the '71 contract on page 66, is it not the same as the 1968 contract which you have just testified about?

A It appears to be.

Q And it talks about LTL and consolidated full container loads, is that right?

A Yes, it does.

Q Now, will you turn to the 1974 agreement, page 68; and is it not a fact that the rules on containers were changed as inserted in the 1974 contract?

A Yes, there were alterations made.

Q And is it not a fact on the containers as you heard Mr. Houff testify, that he would have been charged with a stripping violation under Rule 1(a)(3) and 2(b)(2) of your agreement?

A Say that again.

Q 1(a)(3) and 2(b)(2) would have been the sections in the '74-'77 contract which you would have charged Mr. Houff with violating—excuse me—you would have charged the U.S. Lines [229] as a result of the stripping violation?

A Yes.

* * * *

CROSS EXAMINATION

Q (By Mr. Kelsey) Mr. Billups, I would like to go into your background and how the phases of the clauses of the contract which you have ben asked about evolved into the contracts which are now exhibits in the Court.

First, when did you first go to work on the piers at Hampton Roads, how many years ago was it?

A 32 years ago.

Q 32 years ago. Have you done practically every type of job as a Longshoreman worker in the ports of Hampton Roads in the loading and unloading of ships?

A Everything but operate a container crane.

Q All right. Now, when did you first start serving on the negotiating team of the ILA which negotiated the local contracts and local, as it now turns out, container

rules [230] with the employers, when did you first start forming a negotiation team?

A In 1954.

Q And have you served in every negotiation since 1954 to the present time?

A Yes, I have.

Q Now, first, I would like to get to what's just been asked you; and I will go into the contract here. You were asked whether or not on full shippers loads the ILA stripped full shippers loads on a house to house status; and I think you stated that the ILA did not.

A Right.

Q Right. Now, when does the container cease to have the house to house status—or a full shippers load cease to have the house to house status under the contract—or when would the ILA be entitled to strip this load?

A When a full shippers load does not go to the beneficial owner or consignee of the cargo at his own installation and is off-loaded by his own employees, then, it loses its identity as a full shippers load.

* * * *

[232] Q (By Mr. Kelsey) Mr. Billups, state to us when the full shippers load loses its status—I think I asked you this. When it is stripped within the 50-mile limit, is that correct?

A A full shippers load loses its identity, whether it is in or out of the 50-mile radius, when it does not go to the beneficial owner's installation and is off-loaded by its own employees.

Q All right. Now, at this point, does the ILA have the right under the contract and under your agreement with the employers there, to do this stripping of this container—that's if you've got it?

A Any other containers, other than the one just outlined by me, must be stripped at the pier.

Q All right. So—

A And, of course, in the '74 contract under the Dublin rules, if a consignee desires his cargo to be stored in a public warehouse under the 30-day warehousing clause,

then, that container is permitted to move to the public warehouse to be stripped.

Q All right. Now, to your knowledge, do you know of any instance in which the ILA has believed that the employer has known in advance that the trucker would strip a load which was supposed to go house to house to the beneficial owner, do you know of any instances?

A We have no way to prove that he knows.

* * * *

REDIRECT EXAMINATION

[233] Q (By Mr. Rosenstein) Mr. Billups, if full shippers load was destined to a point 450 miles from Norfolk and if it is taken to a point 350 miles away and stripped by the trucker, do you consider that a violation of your contract?

A It's a violation of the clause in the contract that exempts the stripping of the container at the pier, because it no longer qualifies as a full shippers load, because it was short-cut prior to its going to its bona fide beneficial [234] owner's installation and off-loaded by his own employees.

Q Doesn't your contract talk in terms of evasion, going to a non-CONASA port beyond the 50-mile radius?

A Well, the contract stipulates that if, for the purpose of evading the 50-mile rule, that it could be extended beyond that point.

Q And you take the position that you could extend it as far as 449 miles, if the manifested destination was 450?

A We consider that the contract deals with a house to house container going and consigned to a consignee or beneficial owner, wherever it is, and we exempt it on those terms. Any deviations from that principle, it becomes a stripper.

Q And your contract you're speaking is between the shipper, such as U.S. Lines, and ILA?

A Yes.

Q You have no contract with the broker, you have no contract with the motor transport carrier?

A No.

* * * *

[235] OTIS LANDIS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Landis, would you give your name and address for the record, please?
A 5718 Bartee Street, Norfolk, Virginia.
Q Where are you employed?
A Teamsters Local Union 822.
Q And so you hold a position in that organization?
A Secretary-treasurer.
Q And how long have you held that position?
A Approximately two years.
Q Prior to holding that position, what type of employment were you involved in?
A Truck driver.
Q And for whom did you drive a truck?
A Hemingway Freight Lines, Hennis Freight Lines, Preston Trucking Company; quite a few.
[236] Q Are these truck lines in and around the Norfolk area?
A Yes.
Q And for how many years prior to 1973 did you drive a truck?
A Since 1960 in the Norfolk area.
Q Now, does Local 822 represent employees of the Tidewater Motor Truck Association for collective bargaining purposes?
A Some of them.
Q Could you name some of them—some of the companies that Local 822 represents?
A Hennis, Preston, Associated, Carolina, Hemingway, Hall's, Maisland Transport.
Q And have you represented these employees since 1965 to the present date?
A Since before that.

Q Now, do you know what a full shippers load is?
A I think so.
Q Would you describe what such a load is, please?
A Well, it would be normally a full trailer load shipped from one shipper consigned to one consignee.
Q The consignee is the owner of the goods, is that correct?
A Yes.
Q Now, as a truck driver, have you ever had an occassion to pick up the full shippers load at the Hampton Roads pier?
[237] A Yes.
Q Would you describe what procedures you use and you follow before you pick up the container and then when you pick it up?
A He would get a pickup order from the dispatcher. That's the trucking company's dispatcher. You would go to the pier and you would present your pickup order to someone normally at a checkout station they have there. They would instruct you where the container is located and you would proceed there, hook up to it and take it out, go through the container interchange line where a interchange agreement is written for the specific trailer-container. He would then proceed back to the checkout station to get a pass or any other documents that go along to get you out the gate.
Q Now, when you pick up these containers at the pier, was the seal in tact?
A Yes.
Q Do you know whether or not that full shipper load container had been stripped by deepsea ILA labor?
A I would have no way of knowing that.
Q What did you do after you picked up the container?
A Normally, you would take it back to your terminal —your company's terminal.
Q And are those terminals located within a 50-mile radius from the pier area, most of them?
[238] A The ones we represent are, yes.
Q Now, have you ever observed containers being stripped at motor transport carriers that contained full shippers loads?

A Well, I have observed containers being stripped. As far as whether it was a full load or not, I really couldn't tell you.

Q Do you know or have knowledge whether Teamster employees of the aforementioned companies you have described when the need arises have stripped full shipper load containers?

A Yes.

Q All right. And they would be stripped where?

A If the trucking strips, it is done at his terminal.

Q Now, will you tell me the reasons that a trucker, when the need arises, would strip a full shippers load by Teamster employees?

A Well, there would be numerous reasons. One of them would be—It's primarily 20-footers, which they are a very cumbersome trailer for a freight company to try to operate with. They are small. And I think there was some testimony before about the bridge law as opposed to weight limits. You can take two 20-footers. If both of them would have, say, in excess of 45,000 pounds between the two of them, you can consolidate them into one trailer, one 40-or 45-footer freight trailer and take it where it's going, deliver it. Then, [239] you've got a trailer there and they can reload back.

Q Okay. Are there any other reasons that motor transport carriers would strip a container?

A Well, from my experience as a driver and as a business agent, now, in getting complaints from the drivers about containers, they tell me that they are hard to pull, they handle bad, the tires may not be maintained at what they think are proper standards, they have a lot of light problems with them.

And on the 20-footers, with the twin-screw tractor, the three-axle tractor, you do have the problem of the rear tires getting into the landing gear and the chassis frames.

Q Would you explain that?

A Well, when the tractor turns, the trailer—the landing gear, the stand that it stands on when it's not being pulled, these are right up against the back of the tractor; and when you turn, they dig into the tires.

Q How long have Teamster employees been stripping full shipper loads at the employer members of Tidewater?

A I have seen containers stripped and loaded in and out of Norfolk since they have been running containers.

Q Do you recall the approximate year when that first started?

A Oh, some of them were pulling them in the middle-'60s.

Q Now, is there any way, to your knowledge, that a [240] consignee can require a 20-foot container to go in tact to the manifested destination?

A Where the consignee would require it?

Q Consignee, broker—

A Shipper or whatever?

Q Right.

A The only thing I could come up with right off would be on an exclusive use basis.

Q What's exclusive use mean?

A That's where the shipper or the receiver, one or the other—Whoever is paying the freight.—pays a premium for—he gets exclusive use of the trailer. Exactly what it says.

* * * *

[241] Q Do Teamsters consider the work of stripping a full shipper load at their motor transport carrier facility as their work?

A At the motor carrier terminal?

Q Yes.

A I most certainly do.

* * * *

[246] ARTHUR BAKER

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[254] Q (By Mr. Rosenstein) I show you General Counsel's Exhibit 34 and ask you to turn to page three, with respect to exclusive possession and responsibility. Could you explain what that [255] means, please?

A Well, this is one of the provisions mandated by the Interstate Commerce Commission which indicates that the exclusive possession and responsibility of the equipment rests with the using carrier, that he has exclusive possession control and use of equipment until he completes his responsibility, which is to return the equipment.

Q When you speak of carrier, what do you mean?

A Well, this is a carrier under the definition of—or under the control or jurisdiction of the Interstate Commerce Commission.

Q A motor transport carrier?

A This could be a motor transport carrier. It could possibly be a railroad or any domestic water carrier, if it's under the jurisdiction of the ICC.

* * * *

[256] Q (By Mr. Rosenstein) I show you what has been marked as General Counsel's Exhibit 36 and ask you if you can identify that document.

A Yes, I can. That's the uniform intermodal interchange agreement.

Q All right. What is the uniform intermodal interchange agreement?

A The uniform intermodal interchange agreement is a direct result of a task force composed of motor carrier members, water, steamship carrier members and railroad representatives who got together under the auspices of the Department of Transportation and the Equipment Interchange Association under [257] a business review letter granted by the Department of Justice to allow them to collectively sit down and hammer out a set of interchange agreements that would be applicable between the intermodal carriers; that is, water carriers, railroads and

motor carriers. This was accomplished in 1972, resulting in the UIIA agreement.

Q I show you what has been marked as General Counsel's Exhibit 37 and ask you if you can identify that, please.

A Yes, I can. That is a list of the signatories that are parties to the uniform intermodal interchange agreement.

Q Now, I refer you to page 22 of that document. And I ask you whether or not United States Lines is a signatory to this agreement.

A Yes, they are a signatory.

Q And what was the date that they became a signatory to this agreement?

A They executed the agreement June 28, 1973.

Q '73?

A 1973, right.

Q And I refer you to page 11 of General Counsel's Exhibit 37 and ask you whether Houff Transfer is a party to that agreement.

A Houff Transfer is a party. They signed the agreement March 25, 1974.

Q Now, in General Counsel's Exhibit 36, I direct you to [258] page 5 of that agreement and ask you to look under the section, Use of Equipment. Now, with respect to four point one (a), what is that?

* * * *

[261] Q (By Mr. Rosenstein) Now, what does General Counsel's 36 specifically provide for?

A It provides for the carrier named below owning or operating equipment for intermodal interchange service agrees joint and severally with each and all other carrier subscribers executing a counterpart of the agreement to be bound by the provisions of this agreement and subsequent amendments or [262] revisions thereof governing the interchange and use of, repairs to and settlement for the equipment used in intermodal interchange service when interchanging equipment with other carrier subscribers.

Q Now, is U.S. Lines a subscriber to General Counsel's 36?

A They are; they are a party.

* * * *

VOIR DIRE EXAMINATION

[265] (By Mr. Rosenstein) From your own knowledge, Mr. Baker, is General Counsel's 36 a copy of the agreement that has been signed by the subscribers contained in General Counsel's Exhibit 37?

A It is the exact agreement. We are the issuing agent for the UIIA, Equipment Interchange Association. We forward that agreement to all signatories.

Q I direct your attention to page five and ask you to refer to four point one (a) and tell me what that means.

A Four point one (a) is a standard provision we have used in the motor carrier interchange industry; and this is also the provision that was agreed upon by the water carrier task force members, railroads and the motor carriers. And it reads as follows:

"User shall have the right to complete control and supervision of equipment while in its possession and shall be responsible for returning the equipment in the same [266] condition as received. Ordinary wear and tear accepted."

Q Do you know what a full shippers load is?

A Yes.

Q When a motor carrier picks up a full shippers load at the pier area, would that paragraph refer to the use of equipment?

A In my opinion, it would.

Q Now, does a motor carrier have an agreement to deliver the cargo in that container?

A Yes, he has a bill of lading.

Q I show you what has been marked in evidence as General Counsel's Exhibit 16 and ask you if you can identify that.

A The uniform straight bill of lading.

Q Now, who is that contract between?

A It's between the shipper and the consignee, or receiver.

Q And that document prevails at what point?

A It prevails from when the shipment is picked up until it is delivered.

Q So when the shipment is picked up at the pier area?

A Right.

Q Now, I show you what has been marked as General Counsel's Exhibit 18 and ask you if you can identify that.

A That's a delivery order.

Q Do you know what a delivery order is?

A Yes.

[267] Q And who is that a contract between?

A That's between the carrier and the consignee.

Q When you say carrier, define what you mean by carrier.

A Well, either a motor carrier or a steamship line or railroad.

Q Is there anything on that document which precludes a motor transport carrier from stripping a container?

A No.

* * * *

CROSS EXAMINATION

[276] Q (By Mr. Gleason) We have the same operation with U.S. Lines with a container that they dropped, say, in California and one of your members picks it up to deliver it across country to Norfolk, Virginia. Under this agreement, does that motor carrier have the right to take that cargo out of that container and put it in his own truck for delivery—

A Sure.

Q —to Norfolk.

A What's to prevent him? The bill of lading is from the West Coast to Norfolk, but—

JUDGE WAGMAN: The answer is yes, right?

THE WITNESS: Yes.

Q (By Mr. Gleason) Is there anything in the agreement that specifically says that you have that right?

A There's nothing that says you don't, either.

Q So it's neither way. It doesn't say you can; it doesn't say you can't.

A Right.

Q Now, isn't it a fact that these agreements really are set up for the purpose of finding who is responsible for damages does to the containers in movement and the cost of per diem rates on the containers after the free period, isn't that the main purpose?

A They outline user responsibility and per diem charges.

[277] Q But it has nothing to do with the handling of cargo—

A Basically not.

* * * *

RECROSS EXAMINATION

[289] Q (By Mr. Rosenstein) What is the position of your organization with respect to the right of motor transport carriers to strip full shippers loads once the container leaves the pier area?

A Well, we consider it to be within the purview of the motor carrier, to handle that shipment to his economic satisfaction, or to his economic interest.

If it requires stripping, then, he can strip it.

Q And there are no documents which you are bound by, that being the delivery order, the bill of lading or the equipment interchange agreement, the UIIA, which precludes the motor transport carrier from stripping a full shippers load at his facility?

A None whatsoever.

* * * *

[291] JOHN EVERETT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

[292] DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Everett, could you state your name and address for the record, please?

A 4244 Greenleaf Drive, Chesapeake, Virginia.

Q And where are you employed, sir?

A Everett Express, Incorporated.

Q And in what capacity do you serve with that company?

A President and general manager.

Q And is your corporation a member of the Tidewater Motor Truck Association?

A Yes, sir.

Q Now, can you tell me when containers first appeared in the Norfolk area?

A I believe it was around 1965. Maybe some before; but I believe it was around '65.

* * * *

[293] Q Tell me how you would be selected to pick up a full container load.

A Well, we would be contacted by a customer who would give us instructions that he would have a load or, if it is containers we are speaking of or whatever, have his broker to contact us and give us the necessary documents for us to pick it up with.

Q All right. Now, what type of documents are you referring to?

A The delivery order.

Q All right. I show you—

A Bill of lading.

Q All right. I show you what has been introduced into evidence as General Counsel's Exhibit 18, and I ask you if you can identify what that is.

A This is a delivery order.

Q Is that the same type of delivery order that Everett Express would use?

A Yes.

Q Now, what does that delivery order provide for specifically?

A The primary purpose of the delivery order is to give the carrier authority to go to the shipper and pick up the [294] freight.

Q So when you say the carrier, are you referring to Everett Express?

A Well, Everett Express, if he is the carrier, yes.

Q And you go down to the pier and what do you do with the delivery order?

A The delivery order, you give it to whoever is in charge of releasing the shipment to you.

Q Would a shipper be, for instance, U. S. Lines?

A It's possible.

Q And you would then deliver that delivery order to the shipper, is that correct?

A Yes, sir.

Q All right. And then, what would happen?

A Well, he would in turn turn the shipment over to us.

Q When he turns the shipment over to you, is the trailer in tact—or is the container in tact?

A If it is a container, yes, sir, it is in tact; and, of course, we have to go through an inspection line and inspect it, check it over whether it's road-worthy or whatever and anything that might be wrong with it, have it corrected right then.

Q And this would be with respect to a full shippers load, is that correct?

A Yes, sir.

[295] Q Now, you mentioned a bill of lading. I show you Exhibit 16—General Counsel's Exhibit 16 and ask you if that's the uniform bill of lading.

A Yes, sir, this is the bill of lading.

Q All right. Now, what contractual relationship is involved in the bill of lading, what parties?

A Well, the bill of lading primarily covers the shipper—between the shipper and the carrier.

Q Okay. Now, when you say shipper and carrier, who do you mean?

A When I say carrier, I'm speaking of a truck line or a railroad or Everett Express if he's the principle or the consignee whoever the shipment is going to or consigned to.

Q Assuming you pick up a full shippers load at the pier area, what do you do with it, then?

A Well, of course, from there it is brought to our terminal and billed and from there it is sent out for delivery.

Q Now, have there been occasions when you have for your own convenience opened up a container?

A Yes, sir.

Q All right. For what reasons would you open up a container?

A Well, it could be several reasons. The carrier has the right to inspect any load, so we might want to inspect it.

Q And why would you do that?

[296] A Well, if we have any doubt at all that there might be something wrong with the shipment, or it might not be properly—It might say that this is a load of coffee and it could have rice in the trailer. Of course, this would determine your rate; the rate is determined or classified on different items. A lot of times and mainly, if we have a trailer or a container, for example, and we have—Well, let's use Wilson, North Carolina, as an example. If this load is going into the area of Wilson, North Carolina, and we had a load down there to come back say on another steamship company container and we had to take this container and empty it and then load it, this is not profitable for us. If we took the loaded one down there and bring it back empty, that's still not profitable. So we would transfer the load maybe from one container to another in order to do good business, in other words.

Q Now, what size normally are the full shipper load containers that you pick up at the pier area?

A Well, the size of the container?

Q Yes.

A We have some 20's and some 40's.

Q What size container would you transfer the contents into?

A Well, primarily the 20's.

Q What size would you transfer it into of your own equipment?

[297] A Well, it could go into a 40-foot trailer or 45 or whatever.

Q Now, have you ever had an occasion to call a consignee who owns the goods?

A Yes, sir, I've done this quite often.

Q Now, why would you call the consignee who owns the goods?

A Well, we believe it's a good policy to ask the customer, even though they are getting the container which is supposed to be a house to house movement, because sometimes a customer may not want it to come through house to house. So we will call him and ask him if he minds if we transfer his load; and we have never had one refuse us, yet?

Q Now, you said that containers started in the Norfolk area in 1965, is that correct?

A I would say roughly about that time, yes.

Q Now, between 1965 and the present date, has Everett Express operated with respect to full shippers loads in any different manner?

A No, sir.

Q So when the need arises you strip that container at your facility?

A Yes, sir.

* * * *

[299] Q (By Mr. Rosenstein) Do you understand the question?

A Yes. You asked, I believe, did this say anything on here at all or shows anything on here at all that I cannot strip a container.

Q That's correct.

A No, sir, it does not.

Q I refer you to the bill of lading, and I ask you whether there is anything in the bill of lading which prohibits you from stripping a full shipper load container at your facility.

A No, sir, it does not.

* * * *

CROSS EXAMINATION

[300] Q (By Mr. Lambos) Mr. Everett, when was the last time you handled a U. S. Lines container?

A This morning.

Q Could you tell us what the terms of that arrangement were?

A What do you mean, you mean—

Q Well, don't you have an agreement with U. S. Lines?

[301] A Oh, yes. I'd go pick up the trailer, check it out and bring it to my terminal and I would take it to my customer.

Q And the normal relationship is for you to pick up a container from U. S. Lines and take it right to the customer?

A Well, yes, if the customer is going to load it out, that's true or is going to off-load it.

Q And you have an agreement, other than that uniform intermodal agreement, which is General Counsel's Exhibit 36 with U. S. Lines, which provides for compensation to U. S. Lines for the use of their container, don't you?

A Yes, sir, we have a contract proposal on the per diem.

* * * *

[304] Q (By Mr. Lambos) Do you consider yourself fully bound by this uniform intermodal interchange agreement?

A Yes, sir.

Q And do you carry out the terms of that agreement with respect to all containers that you receive?

A I try to. I mean, as near as I know how, I mean, what I'm supposed to do.

Q And if you were to go to the pier and see an overweight or overladen container at the U. S. Lines pier, what would you do at that point?

A If it was caught, if my driver knew about it before he left there, I would never leave the terminal with it.

Q You would expect that the ILA at the terminal would unload that container and render it safe, would you not?

A No, sir, I wouldn't expect—I wouldn't care who did it. I would go to U. S. Lines and say, "You will have to take this weight off," and it would be up to them to do what they want to about it.

Q And if U. S. Lines employed ILA employees at that facility, it would be the ILA employees who would take care of it—the U. S. Lines' employees?

A I would say it would be up to U. S. Lines; whatever they choose to do would be up to them.

* * * *

RECROSS EXAMINATION

[307] Q (By Mr. Gleason) Mr. Everett, you had stated some cases where these containers came to your terminal and that you had stripped these shippers loads and put them on your trucks to move them.

A Yes, sir.

Q Did you ever notify the steamship company that you were doing this?

A No, sir.

[311] EDWARD G. BOCHERT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

Q (By Mr. Rosenstein) Mr. Bochert, would you state you address for the record, please?

A Yes, 5705 Chippewa Road, Virginia Beach, Virginia.

Q And where are you employed, sir?

A Associated Transport, Virginia Beach, Virginia.

Q And in what capacity?

A I'm the manager.

Q And how long have you served in that capacity?

A A little over three years.

Q 1972?

A Yes.

Q Now, would you explain briefly the business of Associated Transport, please?

A Yes, sir, we are Class A common motor carrier of cargo, freight engaged in interstate commerce. And intrastate commerce, also.

Q Now, how many employees do you have at your Virginia [312] Beach facility?

A At this time, approximately 50.

Q Now, are those broken down into various classifications?

A Yes, they are.

Q Would you tell us the types of employees that you have?

A Well, I have approximately 30 what we classify as truck drivers, 11 platform workers and the rest being clerical, supervision and sales.

Q Are you drivers represented for collective bargaining purposes by a labor organization?

A Yes, they are.

Q And that is what, sir?

A The Teamsters.

Q You indicated that you ship in interstate commerce, is that correct?

A Yes.

Q What is the average distance of your moves from the Virginia Beach facility?

A Our average length of haul from Virginia Beach is about 450 miles.

Q Now, could you give us the distances of the Associated terminal at Virginia Beach to the various port areas where you would pick up containers or cargo?

A Yes, we are about seven or eight miles from the maritime terminals in Norfolk, about that same distance from [313] the Lambert's Point docks in Norfolk, maybe seven or eight miles from the Portsmouth Marine Terminals in Portsmouth, Virginia, and about 20 to 25 miles from the piers in Newport News, Virginia.

Q Mr. Bochert, would you describe what a full shippers load is?

A Yes, sir, it's a truckload freight on a trailer consigned to one consignee and one shipper.

Q Now, has Associated ever had occasions to pick up full shipper loads at the Hampton Roads pier area?

A We certainly have.

Q Will you describe the procedures Associated follows in order to pick up a container?

A Yes, sir. We are issued a delivery order or bill of lading from a broker either in the town of Norfolk or from an outside source through the mail. Upon receiving this, we note on the delivery order that we, of course, have been specified by a shipper, consignee, as the carrier to transport the goods from Norfolk to wherever. The de-

livery order also spells out where the container in this case is at and at which pier, as I mentioned before.

We check with the pier offices down at the particular pier, say, for instance at the Maritime Terminal, asking the responsible party down at the pier office, is container such-and-such released for shipment. If we are advised that [314] this has happened, we send the local driver with a local tractor to the pier area with his delivery order. He then, in turn, reports to the particular party involved, at whatever steamship line it may be, shows the document proving that we are the carrier of record. There he is instructed the proximity at the terminal where he can find this container. He then goes looking for the container.

Upon finding the container by number, he is checking the number or for the number, he takes it through the steamship's checkout line that they have, where the trailer is checked for DOT and ICC compliance for lights, tires and what-have-you.

Q Would you explain DOT? What does that mean?

A Department of Transportation which, of course, governs Associated Transport and all the other carriers as to rules and regulations of the highway and all phases of transportation, dangerous cargoes and what-have-you.

Q And the ICC is what?

A The Interstate Commerce Commission.

Q All right. Would you continue, please?

A Yes. Once this is accomplished and the container is checked by eyesight by my driver as well as the person at the pier responsible, U. S. Lines personnel or whatever, it is then placed off to the side. The driver goes in and signs an equipment interchange, where Associated Transport signs for [315] this container and has accepted the responsibility of the container, and this interchange agreement between, say in this case or my case, U. S. Lines with Associated.

He then obtains a pass to exit the premises, the pier or whatever, the terminal area; and he brings the trailer back to my terminal.

Q Now, you mentioned a delivery order. I show you General Counsel's Exhibit 18 and ask you if that is the delivery order.

A Yes, sir, it is.

Q Now, what does the delivery order specifically cover for you to obtain?

A Well, the delivery order would cover the letter, as I refer to it, specifying, like I said, us as the carrier. The consignee's name would appear on this. A lot of times in a lot of cases, who is responsible for the charges that we will be billing for the movement of this particular freight.

Q Could you speak up a little louder, please?

A Yes, sir.

Do you want me to repeat that?

Q No, that's all right. On the delivery order, does that enable you to pick up the cargo itself?

A Yes, it does.

Q Now, I refer you to General Counsel's Exhibit 16 and ask you what that is.

A This is a uniform straight bill of lading.

[316] Q All right. Now, what parties would be subject to the uniform straight bill of lading?

A The shipper, the consignee and the motor carrier.

Q Now, when you are talking about the shipper, who do you mean?

A The party that originates the shipment.

Q That would not be U. S. Lines?

A No, sir.

Q And the motor transport carrier is Associated?

A Right.

Q And the consignee is the beneficial owner of the goods?

A That's right.

Q Now, I show you what has been identified as General Counsel's Exhibit 44, and I ask you if you can identify that document.

A Yes, sir, this is or was the existing contract between United States Lines and Associated Transport.

Q All right. Now, what type of contract?

A An equipment interchange contract.

Q All right. Now, what was the date that that agreement was negotiated?

A May 6, 1969.

Q All right. Now, what does the equipment interchange agreement provide?

A It's a contract between the steamship line and the motor [317] carrier to interchange equipment.

Q Did you have any other agreements with respect to the interchange of equipment with U. S. Lines in existence in March of 1969?

A Not to my knowledge, no.

Q You arrived in 1973, is that correct?

A '72.

Q Do you know of any other agreement that you utilized to exchange equipment with U. S. Lines, other than that document?

A No, sir.

MR. ROSENSTEIN: I move to introduce General Counsel's Exhibit 44.

JUDGE WAGMAN: Any voir dire or objection.

MR. LAMBOS: No, in the meantime, I have had an oportunity to examine the document. I have no voir dire, and I have no objections.

JUDGE WAGMAN: I take it nobody else objects?

General Counsel's Exhibit 44 is received in evidence.

Q (By Mr. Rosenstein) Now, I direct your attention to September 24, 1974, and ask you whether you picked up any containers on that date.

A Yes, sir, I did.

Q All right. Tell me whose containers you picked up and what you did.

[318] A I picked up eight containers either owned or leased to the United States Lines. I picked them all up at the Maritime Terminals in Norfolk, Virginia, all at one time. It was eight containers involved. We dispatched two local drivers to handle the eight containers down to the pier, and they followed the procedure that I outlined before and brought all eight of them back to my terminal at Virginia Beach.

Q What type of containers were these?

A Well, they were a mixture of 20-foot and 40-foot containers.

Q What type of loads did they contan?

A All shipper loads.

Q Now, what did you do with the combination of the 20- and 40-footers when you brought them back to your facility?

A Well, we had the bill of lading; and I determined that, in each instance, these were cartons of velvet, roughly 12,00 pounds to a 20-foot container. And, at this time, I had empty equipment of my own sitting in my yard doing nothing. Well, I made up my mind to say, strip two 20-foot containers and put them in one of my 45-foot trailers. Two more was done the same way, but with a combination of a 40-foot and a 20-foot we put in one of my 45-foot trailers.

Q Where was the manifesed destination for these containers?

A As I recall, five were in North Carolina and three were [319] in Tennessee.

Q And these were all destined to a point more than 50 miles from the port area?

A That's correct.

Q Now, you said that you made a determination based on the bill of lading to strip the containers. What entered into your determination to strip the containers?

A Well, for one, the merchandise was that of such that it would not be easily damaged, it wouldn't be pilfered, and also they were large cartons, bulky cartons, but very light cartons, though.

And, of course, the economics of the whole thing with my own equipment sitting in my yard, why take on leased equipment.

Q Well, is there a charge you would have to pay on the leased equipment?

A Yes, sir, there is.

Q How does that work, and who do you pay the charge to?

A It is per diem charges that we pay to United States Lines for lease of their equipment while in our possession.

Q Do you recall any other reasons that you determined to strip the eight containers in question?

A As I recall, one of them was overloaded. We then, of course, instead of going to the broker saying we have a problem, we have an overloaded container, we would have to take it to [320] the pier and whatever, I just adjusted the load on my own equipment, the difference being the containers are much heavier than our own trailers.

Q Do you ever contact the consignee prior to stripping the containers?

A No, sir.

Q Does the broker require you to contact the consignee?

A No, sir.

Q Is there any restriction in the bill of lading which precludes you from stripping a full shippers load at your facility?

A No, there is not.

Q Is there any restriction in the delivery order which precludes you from stripping a shippers load at your facility?

A No, sir.

Q Referring to your equipment interchange agreement that was in existence in September of '74, was there any restriction that precluded you from stripping full shippers loads at your facility contained in that document?

A No, sir.

Q Now, is there any way in which a consignee could require that the 20-foot container remain in tact and be delivered as a 20-foot container?

A Yes, there is.

Q And what is that?

[321] A That's by requesting exclusive use of the vehicle.

Q Now, what does that mean?

A Well, that means that the said container will move in tact as it arrived this country to the destination.

Q Was exclusive use of equipment requested on the eight containers that were picked up from U.S. Lines on September 24, 1974?

A No, sir, there was not.

* * * *

All right. I have been tendered this container. I know that I am only getting $400.00 revenue out of it; but, physically and economically, if I decide to strip this container, I'm spending the labor to do it, why make a [322] shipper or a consignee do that? They are good enough to give me the freight, so why should I say I want the trailer stripped at the pier and cause friction or whatever. There's too many carriers around me. We don't need Associated, if they want to run down to the pier and have their containers stripped all the time. So I eat these additional costs. However, when I do strip we make up for it in line haul, diesel fuel and many other aspects.

* * * *

[326] Q Did there come a time when you received correspondence with respect to your equipment interchange agreement?

A Yes, there was.

Q I show you General Counsel's Exhibit 42 and 43 and ask you if that is that correspondence.

A Yes, sir.

Q What happened with respect to your equipment interchange agreement?

A It was cancelled because of the Associated Transport not reimbursing U.S. Lines $8,000.00.

Q So U.S. Lines had paid the $8,000.00 fine to the joint fund, is that correct?

A Uh-huh.

* * * *

[327] Q Now, after the cancellation of your interchange agreement on March 20, 1975, did U.S. Lines ever interfere with your ability to pick up full shipper loads?

A Yes, they did. We received a call—at least Mr. Bryant, the assistant terminal manager at Associated Press did—from a gentleman named Mr. Quigley work-

ing with J.P. Stevens in New York. Mr. Quigley informed Mr. Bryant of a booking number for us to pick up two U.S. Lines empty containers to transport to somewhere in North Carolina to pick up loads for export to come back over the Norfolk port.

Mr. Bryant hung up from Mr. Quigley and called up U.S. Lines and said, "I've got this booking number. When can I pick these two empty containers up?" And I believe the gentleman's name was Edwards. I'm not sure. But Mr. Edwards [328] told Mr. Bryant, he said, "I will have to check with the New York office and call you back." And about 45 minutes elapsed and this phone call did come in, and Mr. Bryant was informed we couldn't handle the containers if we didn't have a contract with U.S. Lines any more. This was Mr. Quigley.

* * * *

Q Now, from the cancellation of your interchange agreement on March 20, 1975, have you been able to pick up containers of full shippers loads at the pier in the Norfolk area?

A You're speaking of other containers?

Q No, of U.S. Lines containers.

[329] A No, sir.

* * * *

Q (By Mr. Rosenstein) Mr. Bochert, you testified that you commenced operations as manager in 1972. Starting in 1972, did you follow the same procedures with picking up full shippers loads as you have described in your testimony?

A Yes, sir.

Q In 1973, did you do it the same way?

A Yes, sir.

Q And in 1974, did you do it the same way?

A I did.

Q And in 1975 with other shipping lines besides U.S. Lines, would you also follow that practice?

A Yes, sir.

* * * *

CROSS EXAMINATION

[343] Let me put it this way: When was the first time that you learned that the ILA took the position that if a shippers load destined for a consignee's place of business were short-stopped at a trucker's terminal and there the container was stripped into a motor carrier's equipment, that the ILA considered that this was a violation of the steamship carrier's obligations to the ILA under their contract, when did you first learn of that fact?

A That exact fact would be at the first—at the injunction hearing, I think. That exact fact.

Q That exact fact.

A Yes.

Q Now, let's take the general knowledge on this subject, when did you first have it?

A I have heard of the 50-mile radius, if that's what you are speaking of. I've known about that for ten or eleven years, that they had a 50-mile clause or something of this nature. I don't know.

Q And ten or eleven years would take us back to the middle or mid-'60s?

A Right.

Q And the 50-mile clause—or so-called—has been well-known in the trucking industry since the mid-'60s, hasn't it?

A It has, I guess, yes; uh-huh.

* * * *

REDIRECT EXAMINATION

[368] Q (By Mr. Rosenstein) I show you Respondents' 3, Mr. Everett, and ask you to refer to 4, subparagraph (e), and I ask you what does that mean.

A Could I have a moment to read it?

Q Please.

A This means that the carrier or the principle, if you want to use Everett Express for the moment, if we abide by this, between United States Lines and Everett Express has full control over these containers when they checked them out from their facilities; they also have full control over any persons or anyone have to do with them.

And if I may, I would like to read it. Maybe it would be more understandable if I could read it.

* * * *

[371] Q Have you operated in your business insofar and having particular reference to the stripping of containers?

And I'm also talking about the period of time from 1965 to the present, substantially in a similar manner with regard to the containers with each of these companies?

A Yes, sir.

Q And does that involve, on your part, the stripping of the containers whenever it appears to be in your company's best economic advantage?

A That is the only reason for stripping one.

* * * *

[375] Q (By Mr. Auten) Mr. Everett, right up to and including the date of this hearing, has anybody with U.S. Lines or with any other shipping company ever said to you that they thought their interchange agreement with you compelled you not to strip any container?

A No, sir.

Q They have never said that any interchange agreement forbade you from stripping a container?

A No, sir.

* * * *

[378] Q And isn't the purpose of that interchange agreement to find out whether damage is done to the equipment and who is responsible for the damage to the equipment?

A Well, that's partly, yes.

Q But isn't that the main thing? If there is no cargo in the container—

A No, sir; no, sir. There's some part of it is to give you the possession of it.

Q Possession of the container?

A Certainly.

Q But not of the cargo?

A No, sir. No one has control of the cargo but the carrier that has it in his possession.

Q Well, isn't it a fact that the delivery order and the bill of lading is actually what controls the cargo?

A Yes, sir. And the bill of lading, if I may add, never comes from U.S. Lines. It comes from the customer.

Q All right. Thank you.

* * * *

[379] ROBERT W. McCLESKEY

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[380] A A full shippers load would be a load loaded by one shipper going to one consignee that would fill a trailer either cube-wise or weight-wise.

Q Has Carolina Freight ever had an occasion to pick up a full shippers load at the Hampton Roads pier area?

A Yes, sir.

Q Would you describe how you go about picking up a full shippers load?

A Well, we receive a bill of lading, delivery order usually from a broker in most cases and give the delivery order to a driver who takes it to the pier. You see the proper people in the office down there. They tell you where the container is and the driver goes and finds it and hooks up to it. He will make a preliminary check, pull it through the interchange line. If everything is okay, leave the interchange line, receive a pass on it, and pull it out the gate.

Q When you pick up the full shippers load at the pier, is that container in tact?

A Yes.

Q Has that container, to your knowledge, been stripped at the pier by deepsea ILA labor?

A Not to my knowledge.

[381] Q I show you what has been marked as General Counsel's Exhibit 18 and ask you if that is a delivery order.

A Yes.

Q And is that what you spoke of that a broker gets to you which enables you to proceed to the pier?

A Normally, the broker does give it to us, yes, sir.

Q Now, what does the delivery order provide for specifically, what does it cover?

A Well, it normally tells you, in the case of containers, what the container number is, where it's going; and it gives the people at the pier the knowledge that you have the authority to haul this container down the road.

Q Does it cover the cargo in the container that is owned by the beneficial owner?

A Normally, it mentions the cargo, yes.

Q Now, when you get that delivery order, do you call the beneficial owner-consignee?

A Not normally, no, sir.

Q So do you then pull it from the pier area some place after you pick it up?

A We always take it to my terminal with a local driver.

Q Now, I show you General Counsel's Exhibit 16 and ask you if that is a bill of lading.

A Yes, sir, that's a blank bill of lading.

Q And who is that contract between?

[382] A Well, that contract is between myself, the shipper and the consignee when I get to the consignee with it.

Q Does that cover the cargo while it's in transportation to the beneficial owner?

A Yes, sir.

Q Now, from the point that you pulled the full shippers load away from the pier, where do you go?

A To my terminal in Virginia Beach.

Q All right. Is that within a 50-mile radius of the port area?

A Yes, sir.

Q Why do you pull it to your terminal?

A Well, we pull it in there and it has to be—we have to cut another bill and it has to be manifested, it has to be hooked to a road truck and given to a road driver.

Q Now, have there been occasions when, for your own convenience, you have opened that trailer and redistributed the cargo?

A Yes, sir.

Q Tell me the purposes that you would do this?

A Normally, there are several reasons. We do it—The main reason is to cut off per diem and get rid of this box that we have no use for in our system. Most of the time, I have my own equipment on the yard empty that I can utilize. We have occasions when road trucks will not hook to these [383] units, the same problems that were mentioned earlier about fifth wheel settings, king pin settings.

Q Would you go through these and also describe what you mean when you said the trailer would not hook onto the equipment that you pulled from the pier to your facility.

A Well, we have a number of tractors—In fact, a majority of our road tractors do not have a sliding fifth wheel. There are many containers, 40's and 20's alike, that have the king pin which hooks into the fifth wheel set farther back underneath the trailer than most trailers. Consequently, when you hook up to it, the frame of your tractor or the tires of your tractor will hit the landing gear or the frame of the trailer. Some of them you are able to pull, but you ruin two tires. Some of them you are simply not able to pull at all; they will not go. You cannot make a turn with them in any way.

As far as the others, we would like to strip them on occasions to cut off the per diem rate. My trailers, we have nothing shorter than a 45-foot trailer or road trailer, nothing shorter than a 13-foot high trailer; and my smallest trailer is bigger than the biggest container around.

Q Now, you said that you pulled the original container from the pier area. Who owns that original container?

A Normally, the steamship line unless it's a leased box.

Q Now, I direct your attention to June of 1975 and ask [384] whether anything unusual happened to Carolina Freight.

A Well, probably a lot of things. One that I can think of, we were—we picked up a container belonging to NYK Lines.

Q What type of container was this?

A It was a 40-foot container.

Q Was it a full shippers load container?

A It was billed as such, yes.

Q And what did you do with it?

A I stripped it.

Q You brought it back to your—

A I brought it back to my terminal, opened the doors and stripped it.

Q Why did you strip it?

A On that particular day, we had—if memory serves me, that container had 26,000 pounds on it. I had two trailers of my own at my warehouse which had loads for Rocky Mount, North Carolina, which is a break bulk terminal. By stripping this container, I loaded both of my trailers which ended up with 42,000 pounds, approximately, on them and the container, of course, was empty. What I accomplished was running two of my trailers with capacity loads on them as opposed to running those two with less than capacity loads and the container which would have been a third vehicle. I saved a trip. And this is the reason that we stripped it.

Q Subsequent or after your stripping, were you notified of [385] any action taken by the International Longshoremen's Association against New York Lines?

A Yes.

Q What was that?

MR. LAMBOS: Excuse me, Mr. Rosenstein. You said what kind of lines?

MR. ROSENSTEIN: I thought it was New York Shipping Lines.

MR. LAMBOS: No, he said NYK.

MR. ROSENSTEIN: Oh, I'm sorry.

Q (By Mr. Rosenstein) NYK Lines.

A That's correct. We were notified that the ILA had made the allegation that we had stripped the container and that NYK would be fined $1,000 if we could not tell them that it had not been stripped.

Q What is the disposition of that at this time?

A At this time, we have made no comment to them about whether it was or was not stripped. Consequently, my interchange with them has been cancelled. I have not pulled any of their containers and I have had some available.

* * * *

[386] Q Mr. McCleskey, at what point did you learn that the steamship line and the International Longshoremen's Association felt that there was a violation of their contract if a full shippers load was stripped at your facility?

A Sometime in 1970, the latter part after October when I came in. Shortly after I came in.

* * * *

[387] Q With respect to the description of the NYK container that [388] was stripped, is this the procedure that you have been following as to stripping full shippers loads at your facility when convenience or necessity prevails?

A Well, I don't strip under those circumstances all the time, not those exact circumstances; but, when it is economically better for my company, yes, sir, I strip them.

Q And how long have you continued to adhere to this policy?

A Well, I came in October of '70 to Norfolk; and the first occasion after that when we had the need and I felt like it was the best thing to do, we did it; and we have been doing it ever since.

Q And has anybody from any other shipping lines since 1970 told you that you could not strip a full shippers load at your facility?

A No, sir.

* * * *

CROSS EXAMINATION

[390] Q You stated that the first knowledge you had with respect to the requirements of the ILA rules were about six months to a year ago, and you received such information from Mr. Merritt. Isn't it a fact that Mr. Merritt and you have had conversations about this subject for a long time prior to this?

A Mr. Merritt and I have had conversations prior to that point; and I told you or I told the other gentleman that I knew about it shortly after I came to Norfolk in 1970. I knew about this agreement.

* * * *

[392] M. L. CHADWICK

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[393] Q All right. Now, what does the delivery order control, what does it mean to you as a motor transport carrier?

A It is instructions to the pier or steamship line to release that cargo to me, the carrier.

Q Now, I show you what has been marked as General Counsel's Exhibit 16 and ask you if you can identify that.

[394] A Yes. It's a bill of lading which is a contract between the shipper and the carrier. This binds the carrier for total responsibility of the cargo that he is handling for this particular shipper until such time he gets it and delivers it to the consignee.

Q All right. Now, do you have equipment interchange agreements with steamship carriers in the Hampton Roads area?

A Yes.

Q Do you have one with U.S. Lines?

A Yes.

Q Do you have one with NYK Lines?

A I believe so, yes.

Q Have you ever had an occasion to personally observe the equipment interchange agreement?

A I have not.

Q What does the equipment interchange agreement provide for, to your knowledge?

A The exchange of equipment. My interpretation would simply be that we would be responsible, and we would check the equipment, the tires, lights and what-have-you, just the container itself or trailer, and we would be responsible.

* * * *

[395] Q Have you had an occasion, upon pulling the container to your facility to strip that container?

A Yes.

Q For what reasons would you strip a full shippers load at your facility?

A Our reasons would be mostly economical, or economics, I'll say.

Q Would you elaborate as to what you mean by economics?

A Yes.

If we should go down to the pier and pull back a 20-foot container that, let's say, has 12,000 pounds on the container, then, of course we certainly are charged per diem for this. Now, we pull these containers. In other words, the cargo is destined to such points as Chicago, Milwaukee or what-have-you which is seven, eight or nine hundred miles away. The per diem rate is quite expensive. I think it goes up to as high as seventeen fifty a day after a certain element of time.

So, consequently, we will strip this cargo off of the container and put it normally in a 45-foot trailer and

[396] consolidate it with twenty or thirty thousand pounds of freight and move it in that way.

Q Has a beneficial owner-consignee of cargo ever told you that you should not or could not strip the container and put the cargo on your own truck?

A No.

* * * *

Q Do you recall when containerization came into the Hampton Roads area?

A I believe '65 or '66.

Q From '65 or '66 to the present date, have you followed the procedure based on your own needs of Hennis Freight to strip a full shippers load at your facility?

A Yes.

* * * *

[397] Q Maybe I misunderstood you, Mr. Chadwick. You said you started with Hennis in 1972?

A Yes.

Q Were you working in the motor truck industry prior to 1972?

A Yes.

Q Was that in the Hampton Roads area?

A Yes.

Q Were you working for another carrier?

A Yes.

Q What carrier was that?

A Associated Transport.

Q To—Were you talking about from '65 to '72, then, what Associated Transport did with respect to full shippers loads?

A So far as stripping them?

Q Yes.

A Yes.

* * * *

CROSS EXAMINATION

Q (By Mr. Lambos) Mr. Chadwick, were you with Associated Transport in 1971 when Associated Transport reimbursed United States Lines a thousand dollars because they were caught [398] stripping one of their containers?

A Yes, sir.

Q And you mean to sit here and tell us that the first time you knew about the—Excuse me. Do you mean to tell us that you are sitting here and saying that no one in the steamship industry had ever told you that your stripping a container at a trucking station was in violation of the agreement between the steamship carrier?

A I did not say that. I said since I had been with Hennis, if you will recall.

Q But you knew this when you worked with Associated Transport?

A That's correct. I did.

Q In fact, you have been at meetings where the steamship carriers—

A You're right.

Q —the ILA—

A Yes, sir.

Q —as a representative of Associated?

A That's right.

Q And you knew that United States Lines had a fine of a thousand dollars imposed against them?

A That is correct.

Q And Associated Transport reimbursed U.S. Lines that thousand dollars?

[399] A That's correct.

* * * *

RECROSS EXAMINATION

[400] Q (By Mr. Lambos) Mr. Chadwick, while you have been with Hennis Trucking Company, you have known of any instance where a steamship carrier was fined because Hennis stripped a container at its trucking station within the Port of Hampton Roads?

A Whether any carrier has been fined?

Q Yes.

A I believe so, yes, sir.

Q So while you have been with Hennis, you have also known about the requirements of the rule, haven't you, Mr. Chadwick?

A Yes; that's right.

* * * *

[402] ALLIE S. McNEIL

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[406] A The shipper or the shipper's agent and the motor carrier. Of course, the shipper could be the consignee in this particular case. But they are the parties to this contract; and it is the sole contract covering the movement of cargo from origin to destination.

Q Is a steamship carrier, such as U.S. Lines, a party to that agreement?

A They are not.

* * * *

[413] A Well, again, the full shipper load is just a designation used by the shipping industry; and it does not govern nor pertain to the motor carrier industry. A full shippers load to a steamship line is not a full load to a motor carrier. Motor carriers have many different types of equipment than steamship lines.

And you can take a 20-foot container or a 40-foot container and take it to a motor carrier's terminal; and the motor carriers have 45-foot high cube trailers which have as much as eight or nine hundred additional cubic feet or storage space. And those are not necessarily a full load to a carrier. It might be a full load to a steamship line.

Q I show you what has been introduced into evidence as General Counsel's Exhibit 5, a letter dated June 7, 1974, signed by yourself to Mr. Jack Mace. Will you tell me the circumstances surrounding your writing that letter?

A This particular letter was a result of a meeting which was called by a subcommittee of the Hampton Roads Shipping Association.

Q Who was at that meeting?

A On behalf of the motor carriers, there were two or three representatives. I was there on behalf of the Association. Mr. Ned Shallow was there on behalf of the subcommittee, and Mr. Joe Murphy and Mr. Paul Fox, T. Parker Host, Jr., was supposedly chairman, I believe, of that [414] committee but he was not present.

Q Was Mr. Mace there?

A No.

Q Okay. What took place at that meeting?

A At that meeting which, incidentally, I think was around March of '74—March or April of 1974, the meeting was called for the purpose to relate to the motor carriers and to the Association that the ILA was now contending that they had a right and was going to fine or strip any container at all if it did not go to the destination—all the way to the destination.

Q And this was when, Mr. McNeil?

A Around March of 1974.

Q Prior to that date, had anybody from the Hampton Roads Shipping Association ever informed you as the president of the Tidewater Motor Truck Association with respect to the stripping of loads within the 50-mile radius? Full shippers loads.

A. No, not if they were destined beyond the 50-mile limit.

* * * *

[416] Q Will you tell me the type of operation that D. D. Jones is in comparison to Associated, Pilot or Thurston?

A Well, D. D. Jones is a combination. They are a motor carrier. In fact, they are the largest motor carrier in the local area, having some 65 tractors there. In addition to that, they are the largest warehousing and distribution company in the local area, having been in business for some [417] 40 years.

Q How is the warehouse operation different than an operation such as Associated, Houff, or Pilot and Thurston?

A Well, the warehousing operation, as I say, is a distribution company. We are set up mainly to handle distribution of cargo; and, of course, about 60 percent

of that is related to the import cargo which comes across the piers.

And the operation we perform for a shipper is different because we will bring cargo that a shipper so designates to our facility and we will perform any services. We actually unload the cargo, we store, we might break it down and repack it, we prepare documents for shipping. We are a distribution firm, in that sense of the word, as far as the warehousing operation is concerned.

Of course, that operation was greatly hindered by the contract itself, not on any control of our own but beyond our control.

Q First of all, let's talk about when did containerization, to your knowledge, come into the Hampton Roads area?

A Well, containers have been in existence—It really became prevalent about 1965; but there were containers in the area prior to that.

Q But when did they first become prevalent?

A About 1965.

[418] Q Now, talking only as to the warehouse operations of D. D. Jones, tell me what D. D. Jones did when a full shippers load came into the pier area, keeping in mind that we are talking about bringing it back to the warehouse. What did you do, what were the procedures that you followed?

A Let me ask you what time frame.

Q 1965.

A In the 1965 period, we would pick a container up. We would have instructions or a bill of lading issued to cover that movement from the pier to the warehouse, just like an over-the-road movement or longer distance. You would pick the container up, unload it—take it to our warehouse, unload it and return the empty unit to the steamship line.

Q In 1965 was that type of container going to your warehouse stripped by ILA labor?

A No, it was not.

Q 1966, tell me the procedure that you followed with respect to bringing full shippers loads to your warehouse.

A The full shippers load would move in tact to the warehouse.

Q In 1967?

A The same.

Q Were there any changes in 1968?

A Yes. In 1968, there was—we were advised that there was a new contract that was going to be effective between [419] the steamship industry and the Longshoremen's Association, and that these units no longer would be able to move to the warehouse facilities within these 50-mile radiuses.

Q Now, how did that change and affect the operation procedures of D. D. Jones' picking up a full shippers load at the pier?

A Well, in a container, we could not pick up a full shippers load in a container because they would not release it to us. We had the right to do so and we had the right to act as the distributor for the shippers, also; but, because of this contract which knowledge of the contract had been passed onto the brokers which in turn had published this to the shippers, although they didn't agree to it, they would not allow—the steamship lines would not turn the containers over to us to come to the warehouse directly.

Q Tell me what D. D. Jones did when you went to the warehouse—or to the pier area starting in 1968 to pick up goods at that time?

A We would send our own trailers to the pier facilities, and our trailers would be loaded and we would dray it back in our own equipment to the warehouse.

Q What did ILA do as opposed to what they did in 1965 through 1967?

A Well, back in 1968 they were stripping the containers on the piers.

[420] Q So deepsea ILA labor would strip the container at the pier; and then, your trucks would pick it up and take it back to the warehouse?

A Yes.

Q Now, how long did that practice remain in tact?
A For about three years or until this CONASA negotiation took place.
Q Are you referring to the Dublin rules?
A Yes.
Q All right. In 1973, the Dublin rules came into effect. Now, how did that change the warehouse operation of D. D. Jones with respect to picking up loads at the pier area?
A Well, at that time, of course, what they classified as a full shippers load owned by one consignee, it was agreed that it could move to a destination within a 50-mile radius under the sole ownership policy.
Q Now, how did D. D. Jones get affected, did it go to your warehouse?
A Yes. Okay. Under a full shippers load as designated, we could pick that container up, take it to our warehouse and then strip it and then return the empty unit to the steamship line; but there were many restrictions. That was only one classification of goods. That was just probably a small pecentage really of the total traffic.
Q Are you talking about import?
[421] A Yes.
Q Is there any other way that it affected the operation of D. D. Jones?
A Well, it restrained our operations. It affected our growth, it affected naturally the business aspect of our company which had been in existence for almost 40 years. It caused us to lose a lot of accounts. Accounts would no longer use the area. Instead of using us as a public service company, they would take the goods to other facilities of their own or other outlying areas which would be greater distances from the port area.
Q Now, Mr. McNeil, have you ever seen the 1974 ILA contract?
A I have seen it.
Q Have you ever read the section that relates to warehousing?
A Yes.

Q I show you what has been introduced as General Counsel's Exhibit 4, the 1974 contract, and ask you to refer to Rule 2(b) (4) on page 70.
A Okay.
Q Is that the procedure you have been describing that came into effect in 1973 by the Dublin rules?
A Yes.
Q And, therefore, continued in the 1974 contract?
[422] A Yes, it did.
Q Now, D. D. Jones, however, are not a party to that contract, are they?
A No.
Q And you have no contractual relationship with the International Longshoremen's Association?
A No.
Q Now, how long has Rule 2(b) (4) been in existence? How long have you followed the 30-day warehousing procedure?
A I believe it was February of 1973. Somewhere in that time frame.
Q And up to what point? Is it still in effect?
A It's still in effect except for one period of interruption.
Q All right. Now, I direct your attention to April 28, 1975, and ask you what happened with respect to the warehousing rule.
A We were advised by Mr. Jack Mace, personally in fact, that the ILA was contending that they were going to try to enforce rules that would supposedly bring all shippers up and down the coastal area in conformance with their own wishes; and, as a result of that, that Mr. Gleason had advised that there was going to be a restriction against any container moving beyond the port area, that they were going to strip them all there. And they would not, during that period of time, [423] allow us to pick up a container and move it to the warehouse.
Q Was there a suspension on the rules on containers effective April 28, 1975?
A Yes.

Q I see. Was the result that occurred similar and identical to the 1968 to 1973 practice where deepsea ILA labor stripped containers at the pier area?

A Yes.

Q And then, the motor transport carrier had to go and pick up those goods at the pier area?

A Yes.

Q Now, approximately how long did the suspension of the rules remain in effect?

A About 30 days.

Q Would it refresh your recollection if May 30th, 1975, they were reinstated?

A Yes.

Q Now, will you tell me the effects of that suspension with respect to the operation of D. D. Jones?

A Well, during that period, we had many shipments which had been destined for our facility to be received and distributed according to the wishes of the shipper; and one large shipper, in fact, began diverting traffic and so did others, saying they refused to use the port area and also use the facilities of D. D. Jones during that period of [424] time, causing our company to lose a whole lot of revenue, on the goods which we would have handled.

Q Do you recall any other effects as a result of the cancellation of the rules on containers?

A Any different types of effects? That is the effect. In other words, you just lose business and you don't get the opportunity to handle the goods.

Of course, the effects, you had two different problems. You had to, again, utilize your own equipment to pick it up, you had delays involved because you could talk about a container moving basically within two to three days from the time it was discharged; but now that the container was going to have to be unloaded at the piers, it was going to be delayed as much as five to eight days before you could get the goods into the warehouse facility.

Many of these goods, of course, or the distributors we worked for, they are awaiting the arrival of the goods.

They have orders pending the receipt of the materials into the facility; and they don't want them delayed at the piers.

* * * *

[431] Q And can you say whether or not the practices which have been enumerated hereby the representatives of other motor truck carriers are similar to the practices which are followed universally by the members of your association?

A Yes, that's true.

Q And, in that respect, then, since the advent of containers, the motor truck carriers have stripped full shippers loads generally when it suited their economic convenience or any other reasons that may appear appropriate to them?

A Yes.

* * * *

[433] Q (By Mr. Bohannon) Now, Mr. McNeill, have you been active in this Association since you have been a member of it?

A Yes.

Q How long has that been?

A Well, the Association has been in existence for probably 25 years. I myself have been a member of it for 14 or 15 years.

Q You personally have been D. D. Jones' representative for that long?

A Yes, I have.

Q That period of time? And, as a member of that Association, how long have you been an officer?

A Well, I've been an officer—It has been about eight or nine years. From second vice president to first vice president and president for a period of three years.

Q Now, in your business with D. D. Jones, do you have [434] contact with other carriers?

A Yes.

Q Aside from your contact from the Association?

A Yes.

Q And as your general work with D. D. Jones and your contact through the Association and your interest and activities in the Association, would that put you in

the position to know without question what the general practice is of motor truck carriers with regard to full shipper loads?

A Yes. In addition to that, I'm also a member, really, of the Hampton Roads Maritime Association; and I deal directly with the committees, with the pier committees, the Association itself and so forth.

Q Now, is the general practice among all the motor truck carriers, such as has been related by, for instance, Mr. Everett, Mr. McCleskey, Mr. Chadwick and the others regarding stripping of full shippers loads?

A Yes.

Q Now, you mentioned that you were governed by the—your contract or the motor truck carriers is the uniform straight bill of lading.

A That is true; and that is the only document that governs—

Q Now, is there anything in this uniform straight bill of lading pertaining to handling of cargo?

[435] A Yes.

Q All right. Would you read us that portion, please?

JUDGE WAGMAN: Is that document in evidence?

MR. BOHANNON: Yes; that is in evidence.

JUDGE WAGMAN: Just let us know what paragraph it is.

THE WITNESS: 2(a).

MR. BOHANNON: It's Paragraph 2(a). I'm trying to avoid your having to read all of this.

JUDGE WAGMAN: Oh, I am going to read everything.

A Paragraph 2(a) of the contract states: "No carrier is bound to—"

JUDGE WAGMAN: We're not reading it.

A Okay. Paragraph 2(a) states that no carrier is bound to transport any cargo by any particular vessel, vehicle or any other means of conveyance. In other words, he can do as he chooses; and that's a part of the contract itself. It's signed and initiated at the time he picks up the cargo.

Q (By Mr. Bohannon) Now, moving over just briefly, to make sure we've got it straight, just how the warehouse business has been handled since the advent of containers, I understand that until the first ILA-HRSA contract entered into in 1968 that D. D. Jones was able to pick up containers at pier facilities whenever they were designated to come to their warehouse and they were not stripped prior to that time?

A Yes.

[436] Q Is that correct?

A That's correct.

Q And that after that contract was entered into, D. D. Jones was able to pick up no containers whatsoever until the Dublin agreement was entered into in '73, is that correct?

A That's correct unless, of course, at one period of time we were handling units beyond the 50-mile radius as a motor carrier which we had sold that authority.

Q I'm talking about your warehouse operation.

A Not within the 50-mile limits, no.

Q So you received no containers whatsoever until the Dublin rules went into effect?

A That's true.

Q Now, when the Dublin rules went into effect and ever since then, you have received containers under the warehouse rule?

A Except for the 30-day inference.

Q Except for the 30-day suspension?

A Yes.

Q Now, tell us again what the effect of this suspension was.

A Well, it ju[illegible] about cut off our business during that period time, having depended upon import traffic for some 60 or 65 percent of our operation; and one large shipper, as I say, diverted traffic. He diverted I know four containers of [437] one shipment which resulted in a loss of some $2500.00 worth of revenue; and, within the next few days, he diverted another four containers, which was another maybe $1800.00 to $2000.00 worth of revenue.

Q Which shipper was this?

A J. C. Penney Company.

Q And in addition to that there were other shippers which had their movements interfered with, Allis-Chalmers was one. We were setting up actually an assembly operation for the Allis-Chalmers Company. They contended that this might knock out their operation entirely. We have this in one of our warehouses over in Chesapeake. They also have their facility in Milwaukee, Wisconsin; and it was a movement, whereas we were bringing in containerized parts for tractors and so forth and putting them together, putting the tires on them and so forth at our building, the lights and safety equipment and things of this nature. And they contended that if these units were going to be stripped at the pier, it would cost them some addition $300.00 per container. First of all, they couldn't afford that; they don't have that much profit built into these tractors. The competition is too stiff. And it would possibly cause them to have to cease doing business with us if this continued.

Q So this continued for this 30-day period?

A For the 30-day period.

[438] Q At which time, the warehouse rules went back into effect?

A Yes.

Q And you have been able to operate your business pretty much in a normal manner since then?

A With the restrictions of the 30-day warehouse rule, which is an hindrance on an efficient operation, as a public service company.

Q That's the Dublin rule?

A That's the Dublin rule, yes.

* * * *

CROSS EXAMINATION

Q (By Mr. Lambos) Mr. McNeil, how long have you been a member of the Hampton Roads Shipping Association, if that's different. The Maritime Association has members of the motor carrier industry as well as steamship industry and so forth. It more or less could be termed as a civic organization.

Q If your testimony was the Hampton Roads Shipping Association, it should be Maritime Association?

A Maritime Association is the proper terminology. And I have been refused admittance into the shipping part of this, any of their negotiation committees or anything. I have even [439] asked personally to be admitted into those negotiations, from the time they started. I advised the Association that it looked like they were getting into areas that were going to effect the motor carrier industry and they had to rights to control. The steamship rights cease at the pier and the motor carrier rights pick up at the pier and govern his movement until he gets to destination.

* * * *

[440] Q And it's also correct that, prior to the Dublin rules in January of 1973, D. D. Jones would have to go down to the pier and pick up any warehouse goods in break bulk fashion, is that not correct?

A That's true for one time period. Prior to this time period, we were free to go and pick it up directly in containers.

Q But from 1968 through 1973——

A You're correct.

Q ——D. D. Jones would go down and pick it up in break fulk fashion?

A Yes.

* * * *

[446] Q All right. Let's take the shipments within the 50-mile limits of the Port of Hampton Roads.

A Destined within 50-miles, I am aware that the ILA and CONASA organization agree that these rules apply.

Q And when did you learn that fact?

A Well, I've learned it, basically, since the rules came into effect.

Q In 1968?

A Yes.

* * * *

REDIRECT EXAMINATION

[453] Q Now, Mr. Lambos asked you with respect to what did you hear at your meetings with respect to alleged stripping violations prior to 1974. And you asked

to explain. Now, explain what you heard and what was the position of the motor transport carriers with respect to the alleged violations for stripping at the motor transport facility.

A The Association has always discussed the container and ILA Unions problems at most all of its meetings if a carrier had a grievance that he wanted to bring up. But the position of the motor carrier industry has always been that they were not a party to the contract and that they were governed by the Bill of Lading contract, which is signed by the shipper as well as the carrier at the time he picks up the shipment.

And he knows that those are the only rules and [454] regulations governing the movement of that cargo. He operates under the Interstate Commerce Commission, under their rules and regulations, and under the authorities granted to him as a motor carrier or as a common carrier. And those are the governing agencies on his operation and that's the only agency.

The steamship line is not even a shipper. The steamship line, in essence, is the same as the motor carrier. The steamship line is a carrier only performing one leg of the service. And the steamship line's authority and control cease at this pier area. In fact, their bill of ladings themselves designate the piers as being the final destination for their service. From that point on is why you have a bill of lading prepared, and that's where the motor carrier picks up and assumes responsibility for the load.

* * *

[467] GEORGE L. MAIER

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[468] Q Could you give us your position with United States Lines in Baltimore?

A I am the port manager in Baltimore.

Q And how long have you been the port manager in Baltimore for U. S. Lines?

A About five years.

Q Do you hold any position with the Steamship Trade Association of Baltimore?

A Yes, I do.

Q Could you tell us what that position is?

A I'm president of that organization.

Q Would you describe for us the identity of the Steamship Trade Association of Baltimore?

A The Steamship Trade Association is an unincorporated association of maritime members in the Port of Baltimore, mainly consisting of steamship carriers, agents and other ancillary corporations allied with the steamship industry.

Q And is United States Lines a member of the Steamship Trade Association?

A Yes, we are.

Q Is the Steamship Trade Association a member of any other unincorporated association dealing with the ILA?

A Yes.

Q Tell us the name of that organization.

A CONASA.

[488] GEORGE L. MAIER

a witness previously sworn, resumed the stand and continued to testify as follows:

VOIR DIRE EXAMINATION

* * * *

[493] Q Now, could you tell us what action United States Lines has taken in each of these cases?

A In cases where it came to our attention, prior to the delivery of such a shipment to a truckman and it came to our knowledge that the intent of the truckman

was to deconsolidate this container and restuff it into his own equipment at his platform, we refused delivery of that cargo to the truckman.

Q Has U.S. Lines handled full shippers loads at its terminal in the Port of Baltimore?

A If we're talking about full shippers loads that we may have stripped from a container, yes.

Q Could you tell us whether there are ocasions when full shpipers loads are, in fact, stripped at the terminal?

A Oh, yes, sir. There were several occasions and several reasons for doing it.

Q Could you give us the occasions and the reasons for that?

A One of the reasons was the one that I just cited in relation to our previous knowledge of a container being deviated from its ultimate destination and being handled prior [494] to its ultimate destination. Another case might be where a container or a chassis or another piece of equipment might be damaged beyond a road-worthy ability to move this container and we would then strip and possibly stuff another container for ultimate movement to destination. A third case may be where the shipper himself might request what we call a pier delivery or an LCL or a break bulk delivery rather than moving it in tact to his facility.

Q Mr. Maier, I show you the documents marked General Counsel's Exhibit 11 and ask you whether this is the collective bargaining agreement for the period from October 1, 1968, to September 30, 1971, between the Steamship Trade Association and the ILA?

A Yes, it is.

Q Could you turn to the rules on containers?

A Yes. Page 3, right at the beginning.

Q In that regard, are these the rules that were adopted by the Steamship Trade Association as a result of collective bargaining in the Port of New York by the New York Shipping Association?

A Yes.

Q And they are the same rules that were in effect in Hampton Roads for the same period?

A Yes.

Q And the same rules that were in effect in the Port of [495] New York for the same period?

A Yes.

* * * *

[496] Q And there is already evidence in the record that in 1971 the negotiations were conducted by CONASA on behalf of all the ports?

A That's correct.

Q Now, were there revisions made in the rules in the collective bargaining between CONASA and the ILA in 1974?

A Yes, there were some general revisions. If we are talking about revisions on maybe putting some interpretations into language, there were some changes, yes.

Q Now, could you tell us what the intent of those negotiations was in June of 1974?

A In June of 1974, of course, the ultimate intent was to come out with a mutually agreeable contract that both sides could live with for the subsequent three years; and the intent also was to maybe codify or put into writing some of the interpretations that had come out of rulings of local committees and substantiated maybe by CONASA container meetings during the previous three years or possibly even going back to the original agreement in 1968.

* * * *

CROSS EXAMINATION

[510] Q Now, when did containers, as we know containers, first arrive in the Baltimore area?

A I was not in Baltimore during the inception of containerization. I only came into Baltimore in 1970. But, as we know containerization today, I would say that the containerization probably started in the late 1960's in Baltimore.

Q When you say the late 60's, do you mean '65, '66?

A In that area. As I say, I was not a resident of Baltimore [511] at the time, so I cannot factually speak to that.

Q When did you first arrive in Baltimore to be affiliated with United States Lines?

A August of 1970.

Q Do you know what a full shippers load is?
A Yes.
Q Would you define it for us?
A A full shippers load is an in tact container moving from a shipper to a consignee directly without any intermediate stops.
Q How many containers does United States Lines handle a year, to the best of your knowledge?
A In Baltimore?
Q In Baltimore.
A About 25,000.
Q How many containers of the 25,000 a year would be full shipper loads?
A I would say in the area of 80 to 85 percent.
Q So, we're talking about seventeen and eighteen thousand, is that correct?
A That's correct.

* * * *

[517] Q Now, I show you two letters dated April 12, 1974, and June 14, 1974, from a Mr. Talbert of Cooper Jarett. Do you know that gentleman?
A No, I don't.
Q Now, if you will read that letter for me, please.
MR. LAMBOS: What date is that?
MR. ROSENSTEIN: June 14th and April 12th.
A Yes.
Q (By Mr. Rosenstein) Now, here was a load that was stripped 287 miles from the Port of Baltimore, is that correct?
A That's what he states, yes.
Q And it was stripped because the load had shifted over the left rear wheel and was unsafe to continue?
[518] A That's what he states.
Q And the ILA contends that that is a violation of their rules on containers?
A I can't speak for the ILA.
Q I show you a letter dated May 15, 1974, and ask you whether or not that is signed by Mr. Fortune.
A Yes.

Q And doesn't that summarize that the ILA contends that those two letters reveal violations of the container rule?
A Right.

* * * *

[523] Q Now, that paragraph says that you were present at the joint container committee meeting where Houff's violations were discussed.
A That's correct.
Q And was that on March 31, 1974?
A Approximately.
Q Now, you contended that the consolidation of house to house containers did not constitute a violation of the agreement, is that correct?
A Yes.

* * * *

[524] Q I show you a letter dated April 11, 1974, from yourself [525] to Mr. Hughes. And I want you to read that letter in its entirety, please.
A All right.
Q Now, the first paragraph you said that a controversy has arisen recently concerning the justification of container fine relating to truckmen stripping containers and transferring the containers therefrom into their own trailers. What controversy were you referring to?
A Well, there were discussions at that period of time that such should not be a violation. There was a school of thought that those were not violations under the contract.
Q Now, tell me all about this school of thought. Who proposed it?
A I don't know who it came from. I remember hearing it within our own committee at one of our meetings. I remember hearing it from other areas. I think some of my contention is based on the feelings of some of our members in the trade, that such was not a violation.
Q All right. Now, these meetings of members of the—Is the Steamship Trade Association?
A Yes.

Q And the Steamship Trade Association is the very association that is party to the ILA agreement?

A Yes.

Q All right. You then go on: "It is a matter of record [526] with the management structure of CONASA that the validity of these fines is in serious doubt." What was the purpose of that statement?

A There were discussions at times at one of the CONASA meetings that such should not be a violation.

Q "And it is now my understanding that there are also some doubts existent among the ILA-CONASA representatives." Who are those?

A Correct. I don't recall.

Q Was this at a meeting that you attended?

A I dare say so, yes.

Q Was this in New York or in Baltimore?

A I don't know. It was a CONASA meeting; I think it was at the meeting in New Jersey.

Q Which would have taken place, when?

A I think that was early '74.

Q So ILA representatives also had doubts as to the violations of stripping loads at motor transport carrier facilities?

A Yes.

* * * *

[528] Q Is it not a fact that these rules apply to containers containing LTL loads or consolidated full container loads?

A I think it's on page four it says that in Section A, yes.

Q And it also says it on page three under containerization, does it not?

A Yes, it does.

Q There is nothing with respect to shippers loads contained in the 1968 contract, is there?

A Those words?

Q Yes.

A No.

* * * *

[529] Q (By Mr. Rosenstein) Now, in your direct testimony, you talked about full shippers loads being stripped at the terminal, is that correct?

A Yes.

Q You mentioned three reasons: The containers being deviated from prior destination, damaged vehicle or a shipper might request this, is that correct?

A Yes.

Q You said that you had approximately 16 or 17 thousand containers a year of full shipper loads which U. S. Lines handled. Of those sixteen and seventeen thousand, to your knowledge, how many would have been stripped at the pier by deepsea ILA labor?

A I'd say—In the course of a year we are now speaking about?

Q Yes.

A I'd say for one of those reasons probably in the area of two to three hundred a year.

Q So a very small amount with respect to sixteen or [530] seventeen thousand containers?

Now, the normal practice, is it not, with respect to full shippers loads, is to allow the load to go through to its manifested destination?

A Correct.

Q And ILA does not strip the majority of full shipper loads at the pier area?

A That's correct.

Q And they receive a royalty payment of two to two fifty a ton for each full shippers load that goes through and is not stripped at the pier by deepsea ILA labor?

A That's correct.

Q And that could be in the neighborhood of forty and fifty dollars per container, depending on the weight?

A Well, the average weight of the container would run about—40-foot containers probably about 15 tons, so we are talking in the area of around maybe $30.00 a container or something in that area.

Q And this money goes into the joint container committee fund?

A Not entirely.

Q Where does it go?

A $1.00 goes into the container royalty fund and a second dollar goes into one of the welfare or pension funds that is a port determination.

[531] Q Now, in the CONASA negotiations, isn't it a fact that this was the trade-off, the royalty payment which would go to ILA for the right of full shippers loads not to be stripped at the pier by deepsea ILA labor?

A I was not party to those negotiations at that time; but, in general, I would say that's correct.

Q Mr. Maier, are you also familiar that the ILA had been given a guaranteed annual wage, were there negotiations with respect to that?

A I know; it's in the contract.

Q And, as a result of those negotiations, wasn't that guaranteed annual wage as a result of ILA giving up the right to strip full shippers loads at the pier area?

A I can't answer that. I don't know.

* * * *

[532] Q (By Mr. Auten) Mr. Maier, for what period of time were you on the STA-ILA committee on containers?

A I think it was from about June, 1971, until—it must have been about February of '74, or something in that area.

Q All right. When you initially became a member of that [533] committee, would at that time the 1968 contract have still been in effect, when you first became a member of the committee?

A Yes, I think it was. If my memory was correct, from the time I got on the committee, yes, it would be.

Q Now, just in general and without referring to the actual wording of the contract for the time being, isn't it a fact that you and other shipper employer members and their representatives very clearly understood the 1968 contract and its rules on containers to apply only to LTL containers and consolidated load containers?

A At that time, I would say yes, that might have been my thinking at that time.

Q And, in fact, this was the position of the industry, was it not?

A I can't speak for the industry.

Q Well, from time to time, you had conversations concerning the rules with other employers?

A No, if you are putting it that way, everybody in the industry agreed to that concept, I would say no, that they did not.

Q All right. Now, as far as the contracts were concerned, it said that the rules applied—and it said in several places, did it not, that they applied only to containers meeting all of three criteria?

[534] A That is correct.

Q And wasn't one of those criteria that the containers be either LCL or consolidated containers?

A Consolidated full container loads I think is the terminology, yes, that's true.

Q Now, how is it conceivable to you—or was it conceivable to you, then, that when that specific criteria set forth the containers to which the rules would apply, how was it conceivable to you, then, that the ILA or anyone else, for that matter, could say that that contract somehow talked about full shippers loads?

A Because no matter what the words said in the contract, there were container committee interpretations of that language that came out, if I can recollect at that time.

Q Yes, sir. Excuse me for interrupting; but, at this point, that is not what I asked. I want to know how this could possible be done when one of the criteria very specifically says LCL or consolidated full container loads?

MR. LAMBOS: I would like for the witness to be permitted to answer the question without being interrupted once the question is asked of him.

JUDGE WAGMAN: Well, it looked like he was not responsive, I think.

A At that time, it wasn't conceivable to me.

* * * *

[535] Q Now, in point of fact, also, you because of your involvement with the committee had many times read the rules through, is that correct?

A I have read the rules, yes.

Q You are aware of the various provisions that they made?

A Yes.

Q Did you know that the rules, when they spoke of the ILA's work jurisdiction, again referred only to LCL and consolidated loads?

A Yes.

Q Did you know that when they specifically talked about stuffing and stripping within the 50-mile radius, that again they referred only to LTL and consolidated loads?

A Yes.

Q Mr. Maier, did you attend meetings in Dublin, Ireland?

A Yes.

Q Between the ILA and CONASA January 25 to 29, 1973?

A Yes.

Q Did you also attend an ILA-CONASA meeting in Miami Beach, Florida, September 11 to 13, 1972?

A Yes.

Q All right. Are you familiar with an interpretive bulletin that came out of those two meetings?

[536] A I am familiar with the bulletin, yes.

Q Are you familiar with minutes of the Dublin meeting?

A I have seen them; my familiarity is something you might have to refresh my memory on.

Q Now, at some point, did you carefully read those minutes?

A I read the minutes.

* * * *

[375] Q (By Mr. Auten) Now, let me hand you General Counsel's Exhibit 22, Mr. Maier. Now, in this letter to Mr. Houff I believe that you recite that you are enclosing certain documents to him which relate to the

rules on containers—explanation on rules on containers. Now, is it not true that with that letter, General Counsel's Exhibit 22, that you enclosed an interpretive bulletin number one coming out of the Dublin meeting, that you enclosed a document entitled "Enforcement of Rules on Containers," that you enclosed minutes of the Dublin meeting and that you also enclosed a typewritten explanation of a house to house move, do you recall all of those things going in that letter?

A Yes, I do.

* * * *

[538] Q (By Mr. Auten) Mr. Maier, I first refer you to General Counsel's 22(b), which is the proceedings of the CONASA-ILA [539] container committee meetings, Dublin, Ireland, January 25-29, 1973.

A All right.

Q Now, these minutes at the top in "A" specify that a number of issues that arose in the meeting in Miami Beach, September 11-13, 1972, remained unresolved, is that correct?

A Yes.

Q All right. And it specifies that the meeting in Dublin was to resolve the open issues and to examine and adopt enforcement of rules on containers.

A Uh-huh.

Q Now, I ask you to examine these minutes, Mr. Maier, and tell me if anywhere in these minutes it is mentioned that a definition of containers was discussed in any way; that is, a definition of containers to which the rules on containers should apply.

A Uh-huh. I don't see anything in these. Proceedings you're talking about, now?

Q Just those minutes that are marked as 22(b).

A No, I don't notice anything there.

Q There is no mention in there of the definition of what containers the rules apply to?

A I can't see anything.

Q Okay. I ask you, now, to refer to a document entitled "Interpretive Bulletin No. 1," and introduced as G. C. 22(e).

[540] Now, I direct your attention to Interpretation 1.1. Would you tell me what Interpretation 1.1 is and what it affects?

A It says "Containers covered." And then, it stipulates the rules on containers which relate solely to the containers meeting either of the following criteria.

Q All right. So these are, then, interpretations or positions on what containers the rules on containers apply to, correct?

A Uh-huh, yes, sir.

Q I direct your attention to the first line. It says, "Relate to containers meeting either of the following criteria."

A Right.

Q Now, it's also true that the contract, the 1968-71 contract, specified that the rules applied to containers meeting all of three criteria, correct?

A That's correct.

Q Not either of the three?

A That's correct.

Q All right. Now, up at the top of interpretive bulletin number one—well, actually it's the second paragraph—it says that this is the first interpretive bulletin that there has been, is that essentially correct as you understand it?

A Yes.

Q And it says that this bulletin sets forth determinations [541] reached by the CONASA-ILA container committee at its meetings of September 11 to 13, 1972, and at its meetings of September 25-29, 1973, is that what the bulletin says?

A That is correct.

Q Mr. Maier, if you attended both of these meetings, doesn't it appear to you that this interpretation one point one, containers covered, was something that was decided at the September 11 to 13 meetings and was not

one of the matters that was still unresolved as of the Dublin meeting?

A I frankly don't recall what meeting it was discussed at. I can't factually state that.

Q Well, do you recall discussions of what containers the rule should apply to?

A Yes.

Q And was there, from the very beginning, agreement on that subject?

A No, there was a discussion on it. There certainly wasn't absolute agreement on it. We had discussions along that line and there were opinions voiced on both sides.

Q Well, in point of fact, CONASA members argued very strenuously, did they not, that the ILA was trying to get something back that it had negotiated away in two previous contracts?

A No.

Q CONASA never contended that?

[542] A I can't recall them contending that, no.

Q Well, what did CONASA contend about what containers the rule should apply to?

A There were several discussions on containers themselves. One discussion related to the owned or leased by carrier element of it in relation to the owning or leasing by the shipper himself. That was part of the discussion. There was another discussion in relation to the three rules having to be applied—for all of the three rules to apply before this violation is contended, as against each individual rule applying on its own merits. That was the big discussion at those meetings.

Q Now, the rules in both the '68 and the '71 contract, it talked about the owned or leased aspect very specifically, didn't they?

A They did.

Q What was left to be argued about that?

A The fact that a shipping company may not own or lease a container that could be moving in this mode. It could be owned by the shipper himself or the consignee himself or by a third party which is not under

the ownership or the leasing arrangements of the shipping company, the ocean carrier.

Q Well, now, aside from the three criteria in the '68 and '71 contracts, isn't it clear that every operative portion of the rules prior to these meetings talked about LCL and [543] consolidated loads and nothing else?

A What do you mean by operative?

Q Every single provision in the rules on containers that describe what containers the rules applied to talked about LCL and consolidated?

A Yes, I would say so.

Q When the contract spoke of the ILA's work jurisdiction, it referred to LCL and consolidated loads?

A Yes.

Q Mr. Maier, I again direct your attention to the Respondents' Exhibit 4 which is before you there. Excuse me. Before I do that, I want to go back just one moment to the 22 exhibit, the very last one in that package. That's General Counsel's 22(f).

Now, this is also one of the documents that you forwarded to Mr. Houff; and it's a typewritten interpretation of what a house to house move is. Who prepared that interpretation?

A I think—I see no heading on it; but I think it was prepared by the Steamship Trade Association sent out to the membership.

Q And what was the date on that interpretation?

A 2-9-73.

* * * *

[546] Q (By Mr. Auten) Well, let me put it to you this way, Mr. Maier: Why would it be that—why did the trucking association state that they wanted to have this meeting?

A Well, because at that time there was some confusion that came out of Dublin. They were word of mouth and hearsay results of our meetings at Dublin and what came out in relation. Specifically, to the warehouse rule. I think that was the big thing, and the trucking rules that came out.

Q In fact, they had also been told by you and by others, had they not, that from now on, they were not to

strip any container that was a full shippers load going to a single consignee, is that correct?

A Correct. Let me put it is way: It was re-emphasized at that time. That had always been a rule that prevailed in Baltimore.

Q Well, let's take a look at that, Mr. Maier. I believe you testified that some twenty—— How many containers are handled by U. S. Lines alone in a given year?

A I think I said about 25,000 through Baltimore.

[547] Q And would that have been true in 1969 through 1972?

A No, sir.

Q What would it have been, then?

A My best estimate—and I'm just roughly guessing, now, I would say '69 it was probably around four or five thousand. And it graduated up to last year up to around 25,000. We have had a virtual increase each year.

* * * *

Q All right. Approximately, how many trucking companies—different trucking companies have picked up containers from United States Lines?

A In Baltimore?

Q Yes. In Baltimore.

A I'd say some place in the area of 100.

Q So U. S. Lines alone has anywhere from 5,000 to 25,000 containers moving onto the docks in this period, which are picked up from possibly as many as 100 different trucking companies. Now, Mr. Maier, I direct your attention to Exhibit 4—Respondents' Exhibit 4; and, without going into it, yet, would you say from your knowledge of those exhibits that [548] there are perhaps about 15 total cases in those exhibits during the period 1969 through 1972?

A Yes, I'd say that's a rough estimate. I haven't counted them, but I will go along with that number.

Q Well now, a number of those cases during that period of 1969 to '72, don't some of those—— Well, certainly some of them find no violations, correct?

A I believe so, yes.

Q And would it surprise you to know that some of them deal with stuffing containers?

A No, it wouldn't surprise me.

Q And that some of them deal with warehousing?
A No.
Q If I represented to you that only eight of them could even arguably have anything to do with full shippers loads, would you take exception to that?
A No, I think it's a matter of record of what's here. If we want to make a count of it, we can sit down and start counting; and so I won't take exception to what you say.
Q And that three of those eight were subsequent to the Miami Beach meetings on CONASA and ILA?
A I won't argue with you.
Q So that of thousands of containers, a hundred trucking companies, we have approximately five cases that may have been considered violations for stripping of full shippers loads, does [549] that sound about right?
A Well, again, all I can say is yes. If you've counted them, I will take your word for it. I haven't.

* * * *

Q (By Mr. Auten) All right. Mr. Maier, you testified about the position that you took with reference to two containers stripped by Houff Transfer at their terminal which they had picked up from the dock and from United States Lines.

Now, at about this same time, you were aware that Lavino Shipping Company and Mr. Jeffrey Footner, who I believe was with Bay Agencies, were both contesting claims identical or very similar on their facts to the complaints against Houff?
[550] A Yes.
Q You were aware of that. Now, in fact, there were approximately—— Well, there were two or three meetings of the container committee at which your cases involving Houff, Mr. Footner's cases for Bay Agencies, and Mr. Eustace, I believe it was, cases for Lavino were all coming up at the same meetings and were similar cases?
A Yes.
Q And you were aware, were you not, of Mr. Footner's position with regard to those?
A Yes.

Q Would it be a fair characterization of Mr. Footner's position that he said absolutely and definitely that these contracts have never applied to anything but LCL or LTL and consolidated loads?
A I think that's in the record, that he has a letter to that effect, yes. It has to be a fair application of his position; he put it in writing.
Q All right. That's in Respondents' Exhibit 4.
A Right.

* * * *

[551] Q Well, wasn't Footner saying to you "not only is it going beyond these rules on containers to fine me, I don't care about your precedents, you have been fining other people wrong, too, "isn't that a fact of what he said?
[552] A He stated that in his letter, yes.
Q Now, were you ever a party to discussions among the shipping employer members, the STA members of the joint committee, which conversations some or one of you said, "We may have been imposing these fines wrongfully"?
A I don't recall.
Q Well, I believe you testified earlier that when you raised a defense to the complaints regarding Houff, I think you said, "There's a lot of doubt about this. It may be illegal."
A I think I raised the doubt in questioning the position of the fines, because, yes, there were some questions raised at that time.
Q Well, you said it might be illegal, didn't you?
A I might have, yes.
Q And if you were going around fining people and thinking that you shouldn't have imposed those fines because the validity of the fines was in serious doubt, because the procedure might be illegal; and you discussed that with no one?
A I discussed that with no one? No, I'm sure I discussed that with somebody. That was part of my opinion at that time.
Q Who did you discuss it with?
A I don't recall.

Q Did you tell United States Lines personnel in New York [553] they may be violating the law?

A No.

Q You never mentioned it to them?

A No.

Q Did you say to the other members of the container committee they may be violating the law?

A Yes. It was discussed at some of our container meetings that there was a difference of opinion.

* * * *

REDIRECT EXAMINATION

[557] They have always contended, as long as I have been exposed to the hearings before the container committee, they have always interpreted that as being a shippers load, as we are talking about here.

Q So that the words, full consolidated load, also apply to a shippers load that was short-stopped?

A Yes, sir. That was the interpretation.

Q And, eventually, the employers concurred in that interpretation, did they not?

A Yes, we did.

Q And the intent in the Dublin meeting was to make clear that the whole world knew that that was the interpretation?

A That is correct.

* * * *

RECROSS EXAMINATION

Q (By Mr. Auten) Mr. Maier, if Houff Transfer, Inc., consolidated two full shippers loads into its own trailers, wouldn't it necessarily have to strip the containers that they were in to do it?

A I would suspect so.

Q So when you are talking about consolidation in Houff's case, you've got to involve stripping, don't you?

A Yes, sir.

Q All right. Mr. Maier, if all interpretations were [558] consistent, that full shippers loads could not be short-stopped, that being short-stopped made them consolidated loads, can you tell me, sir, why then it was necessary for the new Dublin interpretation and for the new contract language in 1974?

A Mr. Auten, it's always, I think, good to come out with new language once in a while to reflect in writing what interpretations are. I think this is done in various bodies. It's done often; and, you know, if you have an interpretation of a rule, you should as long as you have the forum to expose it, it should be exposed and made available to the industry or anybody concerned. This was just an allucidation upon the interpretations putting them in writing.

* * * *

[559] Q (By Mr. Auten) Didn't the union letter simply say "a container has been stripped within the 50-mile radius consigned to such-and-such a consignee at such-and-such a location without ILA," isn't that all it said?

A In effect, that was the alleged claims, yes.

Q It didn't even say what kind of load it was, did they?

A I don't recall any particular thing about it.

Q Didn't the findings on every one of those cases say that we find this to be a violation of the Rule 8(e)?

A Yes, I presume so; and, in the course of those findings, the type of shipment came out in the hearings. The decisions were not made on the basis of the letters alone; the decisions were made on an investigation of the whole alleged violation.

Q I'm sorry, sir. I meant to say Rule 3(e).

Now, Rule 3(e) just says that stripping and stuffing in violation of the rules on containers is forbidden and it provides for fines and says that there won't be any false documentation.

Is there anything else in there?

A Evasion.

Q Evasions. Now, I submit to you, sir, that never once in any document that's in that file is a stripped full shippers load referred to as a consolidated load. Do you dispute that?

[560] A No.

* * * *

[562] Q (By Mr. Bohannon) But, aside from that, tell me when you knew a container would be stripped and you ordered it stripped at the pier?

A Well, as I started to say before, we were always cautious of releasing 20-foot containers to a truckman for fear that we may be saddled with a violation and a subsequent fine. So, normally, when the delivery order is presented, we would question the truckman as to whether he is going to abide by the directions of the delivery order and deliver it directly to the consignee at the address named on said delivery order.

If he says, no, he's taking it some place else, then, we will not release the container until we are assured that it's going to destination as cited on the delivery order. If we have no assurances to that effect, then, we will then talk to the broker and advise him that we will not release the container as a full shippers load, we will have to strip it with ILA labor until such time we can get assurances that it will move intact to destination.

* * * *

[565] Q (By Mr. Rosenstein) Mr. Maier, I'm going to read you a definition of a consolidated container load. And that means a container load of cargo when such cargo belongs to more than one shipper on export cargo or one consignee on import cargo, does that comport with your understanding of a consolidated container load?

A A consolidated container load, yes.

Q Is that correct?

A Yeah.

* * * *

[568] DIRECT EXAMINATION

Q (By Mr. Lambos) Captain Haynes, by whom are you employed?

A The New York Shipping Association.

Q How long have you been employed by New York Shipping Association?

A Since June 1, 1958.

Q What is your present position with New York Shipping Association?

A Executive vice president.

Q When you first started with New York Shipping Association in June of 1958, could you tell us the position in which you were employed?

[569] A I was hired as special assistant to the chairman.

Q And what was the name of the chairman at that time?

A Alexander P. Chopin.

* * * *

[570] Q Now, coming to the period immediately prior to the labor negotiations between NYSA and ILA in 1959, on the basis of your expertise and experience, Captain, could you describe for us the work jurisdiction of the ILA on the various piers and [571] terminals in the Port of New York?

A Well, the ILA provided labor to do the work from the gate of the pier or the terminal—all the work on the terminal to and including loading or discharging cargo in the hold of the vessel. So they had from the hold to the ship out to the outer limits of the terminal. That was their jurisdiction.

Q Before we go further, Captain, could you describe for us briefly the various crafts of workmen that would work within the ILA compound which you have just described?

A Well, of course, the Longshore employees which includes the gangs, the drivers on the dock and the terminal labor, employees on the dock. Then, there are checkers, clerks, checkers who check in cargo—tally the cargo to and from the vessel are on the pier. Then, clerks who handle the clerical work in the office relating to cargo. Maintenance employees that work on maintaining the pier, maintaining the equipment used on the pier and maintaining, for instance, if they have boilers to keep the offices warm in the winter or if they have electricians, et cetera, whatever they need for pier maintenance.

They had carpenters that did shoring work inside the the hold of the vessel—or they still have, and coopers that would open a package or repair a package. For instance, it opened packages for custom inspection and repair packages [572] that are damaged and that kind of work.

Q Now, coming back to the ship itself, now, you referred earlier in your testimony to ships gangs. Could

you tell us what work was performed prior to the advent of containerization and even today on a break bulk ship?

A Yes. As far as the gang is concerned, there are at the present time 17 men in the gang, 8 of them in the hold, 6 on the dock, 3 of them on deck to which they have usually on a normal operation 2 drivers. The drivers bring the cargo from a point of rest on the pier to the stringpiece where it's handled by the dockmen of the gang, put onto the sling or hooked up. Then, it's lifted into the hold and is stowed by the holdmen of the gang. And, on discharge cargo, this process is reversed.

Q When you say that the cargo is handled by the holdmen in the hold of the ship, could you describe what activities would take place in the hold of the ship?

A Normally, the cargo goes on a pallet, under normal standard operations, on a break bulk ship it would go in on pallets. They then take the pieces, the packages, from the pallet and store it or stow it in the corners of the hold until the hold is full. And, on a discharge operation, they remove it from the place of rest in the hold, place it on a pallet piece by piece, package by package, until they build up a pallet. And the pallet, then, is hoisted out, put on the [573] dock; and, at that point, the driver will bring it to its place of rest on the pier where it's either left on the pallet or it's broken down and sorted by marks and chop marks so that it can be delivered into the individual trucker that will come down to pick it up.

Q Now, going back to the period before 1959, you testified a moment ago that, at the present time, there are about 17 such gang members that would work in the hold of the break bulk ship. What was the number back in 1959—in the period prior to 1959?

A It was 21. A foreman in 20 men. Now, it's a foreman and 17 men.

Q So that there has been a reduction, in effect, of three men?

A Three men.

Q Today. As compared with the period at that time. You have brought the cargo, now, to a place of rest

at the side of the pier. What would happen with the cargo at that point?

A Well, when it is brought to the pier or when it is brought from the hatch by the driver of the Hi-Lo to the place it is designated that this cargo is to be stored. As it comes out, of course, there is a layout of the dock where the cargo is to be placed. Then, it will be removed from the pallet; and, at that point, the men in the dock gang will sort it out by chop marks so that it will be quickly [574] delivered when the truck comes down to pick it up.

Q Now, could you describe for us what sorting out by chop marks actually mean?

A For instance, on a shipment of tea, there may be three cases or there may be 100 cases in one lot; and that will be chopped down into 15 or 20 different chop—what they call chop marks. Because maybe three cases belong to one guy and five cases to somebody else, ten cases to somebody else. What they do is that they sort it by these chop marks so that when the trucker comes down to pick it up, he brings a delivery order and requests his cargo with such-and-such marks on it. Then, of course, they know where to direct it and the checker, then, goes and checks those particular marks onto his truck.

Q Now, all of this work was physically done by the ILA Longshoremen working as terminal—in the terminal?

A Yes, sir.

Q Could you tell us what other work was performed within the terminal by ILA Longshoremen?

A Well, the cargo is received initially on the loading ship. The cargo comes to the pier or it came to the pier on those days and it still does on a break bulk operation; and it came to the pier on a truck. Each truck would bring such-and-such amount of cargo from a number of consignees, shippers or from one shipper, depending on the circumstances.

Then, the truck would arrive, it would be checked in. [575] Q Now, who would perform the checking in of that truck?

A The clerks at the pier—at the head of the pier.

Q And to what union did the clerks at the head of the pier belong?

A The ILA.

Q Now, would you continue? What would happen after the truck had been checked in?

A The truck would then be directed down to a spot on the pier. For the loading of a vessel, as the cargo arrived, you have advanced notice of what you are going to receive, so you would lay out your pier where you want cargo going to such-and-such a port. Then, the truck is sent to—— Say, for instance, if the cargo is destined to Yokohama, then, a bay on the pier would be allocated to Yokohama cargo. Then, the truck goes to that bay, where the cargo is removed from the truck, it's tallied by a checker and placed into a point of rest on the pier.

Q Now, who would perform that tally?

A The ILA checker.

Q And who would take the cargo from the truck and place it at the designated spot on the pier?

A The driver of the truck would put it to the tailgate and then the ILA would be there to put it to a point of rest.

Q And the ILA would take it from the tailgate and place it wherever they thought it ought to go within the pier area?

[576] A Yes, because it depends on the—— You have to lay it out, because some cargo is light and some is heavy; and it depends on the consistency of it, the kind of cases, how you are going to stow it in the hatch. So you try to sort it out at that point so that it stows properly when the ship is in to load and you don't have any delays on the loading.

* * * *

Q And I take it that, from time to time, the Longshoremen would make up pallets?

A Yes.

Q And what is a pallet?

A Well, a pallet is a wooden—or primarily made of wood—framework that's about eight inches thick and about four feet wide by six feet long, roughly. There's

different sizes; but that's the average size. The cargo, then, is taken and placed on pallets so that the Hi-Lo could pick them up and bring them quickly to the stringpiece where it is swung up and brought into the hatch.

* * * *

[578] Q Now, in addition to the 210 Longshoremen that might be working on a ship, I take it that there were other ILA craftsmen that might also be working on the ship as might be required?

A Yes, it's what we called—— No, not on the ship. The gangs did all of the ship work. There were other ILA men working with respect to the vessel. That was terminal work.

Q Was there any clerical work to be performed on the vessel with respect to the loading or discharging of cargo?

A That's done up in the office. That's done by the clerks in the office.

Q And would you have checking of cargo as it came in?

A Yes; oh, yes. Yes, checkers would be on the ship.

Q What unions would those checkers be members of?

A The ILA.

If you had any carpentry to be performed on the ship with respect to the stowage of cargo, who would perform that work?

A The ILA carpenters.

Q And that would be in addition to those 210 men?

A Yes.

Q So if there were some broken bags or broken boxes and [579] repairs were required there, who would perform that work?

A That would be done by coopers, which were also ILA.

Q That would also be ILA men and that would be additional to the ships gang members, the checkers, the other people who might be working in connection with that ship?

A That's right.

Q Now, in addition to that, with respect to the terminals, approximately how many people would be servicing the ship having all of these ILA people working?

A At pier nine, we had the staff of about 70 terminal labor employees. And by terminal labor, I'm talking about the Longshore craft employees who assisted in the loading and unloading of trucks, who would snug up the pier and do whatever work there was in connection with the receiving and delivering of cargo. Then, we had, if I remember correctly, about 60 checkers altogether which would include both the checkers assigned to the vessel and the checkers assigned to the pier.

Q That would be in addition to the 70 ILA Longshoremen working in the terminal?

A Yes.

Q And what other employees would you have in that terminal?

A I think there was nine maintenance men who maintained the pier itself. APL owned the pier; it belonged to the company. So they did maintenance work on the pier, the electricians and so on. And there was—— No, I think there [580] was nine coopers and 14 maintenance men. That was it. It's been a long time, now.

Q Now, was the operation which you are describing with respect to APL representative of break bulk operations in the Port of New York for the period prior to 1959?

A Yes. It was similar to all the other operations. They were all about the same.

Q Now, let's go to a container operation. The APL break bulk ship leaves the port and an APL or any other company that you might care to name container ship comes into the port, will you now describe the number of men now working on that ship?

A They usually have two gangs. They have one gang per container crane used; and normally they use two cranes. But they can use three, in which case, they have to put three gangs on. But, usually, they unload—— It depends on the size of the ship and it depends on a number of factors. For instance, with the great big ones, they would use more. But the average container ship, I think, probably would use two gangs and maybe three. One gang per crane.

Q And could you compare for us the speed with which the ship would be loaded or discharged, a container ship by these gangs, as compared with a break bulk ship?

A Well, they can discharge a container vessel with 10,000 tons in less than a day or 14 or 15 hours; and we would have on [581] a break bulk ship of four or five thousand tons, it would take five days.

Q And it would take five days with the labor that you have described?

A All of them working around the clock.

Q Getting back to the period prior to 1959, were there any receptacles for cargo in use on the various piers in the terminals in the Port of New York?

A I'm sorry?

Q Receptacles, boxes or——

A Prior to when?

Q To 1959.

A Yes.

Q Could you describe those for us, please?

A Well, there are a number. The company I was with started using a very small what they called an APL container. It was four by six by six; I remember the exact measurements. It was a small box. We started using those in the early or the late 40's. I don't remember the exact year, but it was in the late 40's we started getting a few of them. Now, in the 50's, when we hauled military cargo, we started getting what we call Conex boxes. They were larger. They were, I think, eight by eight by eight or a little larger than that. I can't remember the exact measurements. Then, the Dravo containers came in, which were eight by eight by eight. But they came [582] in in the early 50's, in that area.

Q Could you tell us who worked in the loading——

A There is one exception. There was another container called a Bowling Green Van. Now, that one was there since I think before World War II. But that was a van that was used for personal effects. It was a large

wooden box about eight by eight by ten, in that area of size.

Q And was that box used for the use of personal carriage——

A For personal effects only.

Q But putting the Bowling Green boxes aside for the moment, would you tell us who performed the work on these various boxes, whether they were Conex or Dravo or the smaller boxes on the piers and terminals?

A Well, when they first started out, the boxes came in, of course, I was still going to sea when the first little containers came. They would be standing up at the head of the pier where they were put in special cargo or high value cargo which required longer stowage.

Q Who would put them in that special——

A The Longshoremen on the pier. Then, they would bring the box down—maybe bring three or four boxes down, in San Francisco—— That's where I first saw them on board, in San Francisco destined for Yokohama, Kobe, and Hong Kong and Manila. I think we got four of them, one for each port. And each one of them contained a number of individual packages of high value [583] cargo that was considered locker stowage; and they put them in this box. We took them there to the port of destination where the box was removed to the pier; and then, they were unloaded on the spot. If I remember right, we unloaded them right on deck; and then, they would put the cargo on a pallet and brought it off the dock.

Q And who unloaded these boxes on the deck?

A The Longshoremen.

Q And who would then deliver the cargo and move it from the stringpiece to the place of ultimate delivery?

A The Longshoremen.

Q Now, do the Longshoremen in the various piers and terminals in the Port of New York do all the work functions up to the time that that cargo is actually delivered to any type of conveyance?

A Yes, they do.

Q What kind of conveyances might they deliver to?

A Oh, the trucks, ladders, railroad cars.

Q And was cargo received by the Longshoremen from the same type of conveyance?

A Yes.

* * * *

[586] Q Now, you are talking about the deepsea trade. Was there also an advent of containerization in another trade?

A Yes, in the Puerto Rican trade, which is really the deepsea trade; but I separate it in my own mind, because it was a different run. And that had become containerized, I think, in originally in '57. And there, were using this one company, the Pan-Atlantic at the time which, subsequently, became Sea-Land. They were using full container ships; that's all they put on is the 35-foot boxes and the 20-foot boxes.

Q Now, Captain, will you tell us what the reaction of Longshoremen in the Port of New York was after the advent of containerization at a point in 1957 with the introduction by the Pan-Atlantic of the first container ship?

A What was their attitude? Well, there wasn't too much of a problem with the Puerto Rican, because they started it in an area where they didn't have too much work. They started it in Newark. And, therefore, it was a new operation to that group of people. The company started business and everybody that they hired was new. It was a job for someone for whom there wasn't that much work in th beginning. Okay. So it meant something to those people. Therefore, that operation got off the ground and got going because it started where it was started, with a group that was depressed.

Q Now, did there also come to be the use of containers here [587] and there on the decks of break bulk ships?

A Yes. In '58 it started—they started handling containers in the overseas routes. They would put them on deck in the squares of the hatches. Mostly, this was Dravo sizes and the 20-footers. They weren't really into the 40-footers yet; but, at that time, it was Dravo, the 20-footers.

Q Could you tell us what the reaction of the Longshoremen generally was with respect to that type of container throughout the port?

A Well, you know, in the beginning, like anything else that starts new, it wasn't too critical. As I said, the first grievance that I have any recollection of or that I can find any record of was the one—I think it was in November of 1958. And this grievance came up because the gangs were complaining about the fact that there were going to be less and less work for gangmen. It didn't seem to matter much to the terminal labor, because they were putting the cargo into the box. The gang was the one complaining, because the cargo was being taken to the pier and put on the ship in one draft instead of ten and twelve drafts.

* * * *

[588] Of course, we were going into negotiations. I think we started the negotiations in '59 at around July.

Q Of 1959?

A Yes. And then, because it was becoming a major issue with the ILA, they made a point of seeing to it that they raised it a number of times prior and during the negotiations.

Q Now, do you remember what the ILA position was in the 1959 negotiations?

A Oh, yes.

Q Pertaining to containerization?

A Yes.

Q Could you describe that position for us?

A They didn't want any containers at all.

Q Now, what did they want done with the containers?

A They didn't want to handle—— They started out they didn't want to handle any containers—no containers. What we wanted was the right to use containers any way we saw fit, obviously; as a management representative, that was our function to see to it and do the best we could to achieve the total use of a new innovative process. It was working out well with the Pan-Atlantic, and the other companies were finding it advantageous to use it on their break bulk ships although no one else had a full

container ship at the time. Only Pan-Atlantic. But the others were using them on their trade routes in the square of the hatch and on deck. It was [589] becoming more and more prevalent. So we sought to be able to use these containers as we saw fit. The ILA said, "We don't want you to use them at all." And during the course of the arguments back and forth, the first right we got, we got the right to use the containers on board the vessel. They backed away from the fact that we could not even put them on the ship. And the first right they gave us, "All right. You can use the containers from the dock to the ship." And that original grievance, as far as the gang was concerned, went down the drain.

Q Now, do you remember whether the ILA, during the course of these negotiations, made any complaints with respect to the handling of containers by anyone other than the ILA in the Port of New York?

A Well, yes, they didn't want anybody to handle them but the ILA. Once we got the right to get them on the ship, now, they said, "Okay. You can take them from the terminal and put them in the ship or vice versa." However, we had been already—by this time, now, we had been or various companies had been sending the box out to, for instance, a manufacturer like Schlitz or Pabst Blue Ribbon, where they would fill the box at the factory and bring it down to the pier and it would go on the ship. And this is what the original language for a shipper's load was. In the 1959 negotiations, that language was used concerning that kind of a shipment where an empty [590] container would be sent to a factory and it would be loaded at that factory by that factory's personnel. Then, that container came down to the pier and then was brought on board the ship. That was the first use of this term. And this had been going on, and that's why we got—because we had been doing it—the ILA gave us that right in the '59 negotiations.

Q Now, you talk about the shipper's load. Was there another term used during the course of these negotiations?

A Well, there was—— Do you mean consolidated?

Q No. Would the words, manufacture's label, mean anything to you?

A Manufacturer's label. And shipper's load, which is synonymous, one with the other.

Q And the ILA referred to manufacturer's label, is that one which went to or from a manufacturer?

A Yes.

Q What was the ILA demand with respect to everything else but manufacturer's label?

A They were going to strip it. I'm using current terminology. These phrases that we are using, now, they weren't even in existence, then.

If a box went out or came into the port with freight for someone other than a manufacturer, they wanted to take the cargo from the box at the pier. So that we don't have any misunderstandings about language, this is exactly what they [591] wanted.

Q And did they have any philosophy with respect to where a container might go, whether within the port area or outside the port area?

A Yes. Well, what we got in the 1959 negotiations was what we called the over-the-road. The stuff coming in from Chicago or Ohio where a box had gone out to one of those places and had been loaded full and brought in, we got the right to move that without any interference.

Q In the 1959 negotiations, the ILA force was present through its various locals in the port of New York. Were there any other local unions in other ports also represented in these negotiations?

A Yes, we had to negotiate. We negotiated the master contract. NYSA at that time had the right to negotiate a master contract for five items. That was wages, hours, contributions for pension, contributions for welfare and the term of the contract. So the other North Atlantic ports, Boston, Philadelphia, Baltimore, Hampton Roads, Providence and Portland, each time we would negotiate, they would send us a letter authorizing us to negotiate those five items. As a consequence, when we met with the ILA, the ILA came in with a negotiating committee of 125 people; and, in that 125 were representatives from

all the different areas of the Port of New York and representatives from all the other ports, Boston, [592] Philadelphia, Baltimore, Hampton Roads, Providence and Rhode Island, all of these other port areas were represented at those negotiations.

Q And actually participated in these negotiations, did they not?

A Well, officially, they participated only in the five items. But those items were so co-mingled with the local New York, conditions, that they were there during the whole thing.

Q Now, following the 1959 negotiations, Captain, did there come to be a rule that was followed with respect to LTL or consolidated container loads in the Port of New York?

A Yes. We have a clause in the contract that provides that the ILA would have jurisdiction over that. In other words, what we did, in the beginning, you know, the ILA handled everything within the port complex—the port terminal or pier area, right from the hold of the ship right onto the pier. Now, they had it all. When the cargo came in, either from overseas or from inland, it had to go through this terminal for it to go on board a ship on outbound cargo. Inbound cargo, it came in on the ship and it had to go through the terminal. Okay. Now, they had the jurisdiction from the hold down to the gate or the end of the terminal. All right. Now, when you take a container and put it into the hatch of the ship, what you are doing is that you are enclosing a piece of [593] that hold. And the ILA contended that's part of their jurisdiction; and we agreed that that is right, that that is part of their jurisdiction. So they said, "Well, if you will take that piece of hatch out and put it on the dock, that's still our jurisdiction, it's part of the hold, which is ours."

Now, what they gave us during negotiations was the right for the cargo that was going through the port and on beyond, they gave us the right for that. They said, "That's okay. We won't touch that. But we still have the right to take it off the ship and put it on the dock

and deliver it. But we won't touch that piece of the hold; that's gone."

They also gave us the right, when the cargo—or a piece of that hold comes out and it's on the dock and it's going to a factory where it backs up to the factory and the factory employees unload it, you've got that. Okay. Even if that's in the local port area. But everything else that's in the port area is ours. Anything that's coming in that stops in that port area and then comes to the pier, that's ours, because that's what we always did. The cargo, it always came down onto the pier on the truck and then we unloaded it and we handled it. That's ours. And the cargo that's coming in from overseas and it comes out of the ship and onto the pier and is going locally, then, we want to take it out of the hold, which is now a container, we want to take it out and [594] deliver it t oa truck. Okay. And we agreed to this. And this is in the 1959 contract.

Q Now, has that been the rule followed in the Port of New York from 1959 right down to the present time?

A Yes.

Q More specifically, Captain, what is the rule that has been followed with respect to a container containing the goods of one shipper or one consignee destined to that consignee's place of business either within or without the area which is short-circuited and stripped by trucker's employees at the trucker's platform?

A That's a violation; you can't do that.

Q Has there been any question at anytime in the Port of New York that this is a violation?

A No.

Q Has there ever been, in your experience, from 1959 to the present time, any situation where there has been any question raised with respect to that violation?

A No.

Q Captain, during the period from 1960 through 1968, were there many issues and questions relating to containerization and the impact of containerization?

A Yes, sir, there was lots.

Q And, as a result, were there strikes and strife and grievances and general unrest in the port with respect to [595] containerization?

A Yes, there was.

Q Did you participate in the 1968 negotiations?

A Yes, I did.

Q Do you remember the demand made by the ILA in the 1968 negotiations?

A Yes.

Q And what was that demand?

A They demanded—— It was very simple. They said, "No container is going to leave the pier property. It's going to stay there. It's our work, and we are not going to allow any containers to leave the pier." I don't remember the exact language, but that was the sense of it.

Q And, again, what was the position of the New York Shipping Association with respect to the issue of containerization?

A We demanded free wheeling with containers.

Q And did there come a point where the parties were unable to agree with respect to the issue of containerization?

A Yeah, there was a strike.

Q And how long a strike did we have?

A I think it was like 33 days. I think in '68 we had a 33-day strike over this.

Q Would your memory be refresh if I were to indicate that the strike lasted for 57 days during that period?

* * * *

[597] Q (By Mr. Lambos) Captain Haynes, as a result of the strike and the intervention by Presidential mediators, did the parties finally reach agreement in the Port of New York on or about January 12, 1969?

A Yes.

* * * *

[599] Now, we have your stipulation on your proposed stipulation which is that the New York contract of 1968——

MR. LAMBOS: For the period October 1, 1968, to [600] September——

JUDGE WAGMAN: Is the same in its language?

MR. LAMBOS: In all ports, including the ports of New York, Baltimore and Hampton Roads.

JUDGE WAGMAN: Is the same except for the fine?

MR. LAMBOS: Except for the amount of $150.00, I believe, Mr. Vandeventer?

MR. VANDEVETER: That's right.

JUDGE WAGMAN: Which was set forth in the Hampton Roads contract and later changed to conform to the New York contract.

Does everybody stipulate? Mr. Rosenstein?

MR. ROSENSTEIN: So stipulate.

JUDGE WAGMAN: Mr. Auten?

MR. AUTEN: Yes.

JUDGE WAGMAN: Mr. Bohannon?

MR. BOHANNON: Yes.

JUDGE WAGMAN: The stipulation is accepted.

* * * *

[601] Q And could you turn to the rules on containers and explain to the Court, if you will, those provisions of the rules on containers which made it a violation for any carrier member of New York Shipping Association to have his container destined either for a point outside the geographic area of 50 miles from the center of the port or destined to a consignee within the port area to have his container stripped at a trucker's terminal?

A Why is it a violation?

Q Yes. What in the agreement makes it a violation?

A Rule 1(a), (b) and (c).

Q Now, could you explain that to the Court, please?

A Well, if a container comes in and it's taken from the pier to a point not its destination and the cargo is removed by other than ILA labor, then, that's a consolidated container and is a violation.

The cargo come to the pier and was picked up by truck and taken to its destination, historically. Okay?

Now, when you take that container off the pier and you stop it and take the cargo out of it and it hasn't gotten

to where it's going, then, that's obviously a deconsolidation. What you're doing is taking it out and you are distributing it. Okay?

That's the same as if you had 15 chop marks in there, 15 different consignees in there. It's exactly the same thing. [602] You're distributing them; you are making up a new load.

Q And is that the invariable practice that has been followed in the Port of New York from the inception of the rules to the present?

A Yes, sir.

* * * *

CROSS EXAMINATION

[610] Q Fine. Now, you talked about a 1959 agreement with New York Shipping, is that correct?

A Yes.

Q Do you have a copy of that agreement?

A A 1959 agreement?

Q Yes.

A No.

Q Here it is. Would you show me where any rules with respect to containers—— Primarily, I'm interested in Rule 8(c), which I am sure you have knowledge of.

A That's not the 1959 agreement.

Q All right. Would you turn to Rule 8(c), please?

A Yes.

Q What is Rule 8(c)?

A It says, "Any work performed in connection with the loading and discharging a container for employer members of NYSA which is performed in the Port of Greater New York, whether on piers or terminals, controlled by them or whether it's through direct contracting out, shall be performed by ILA labor at Longshore rates."

[611] Q Now, is that the first time that rules have been codified in an agreement with respect to containers?

A That's the first time.

Q All right. Now, is it not a fact that 8(c) did not apply to shipper's loads?

A Yes, manufacturer's labels, it did not apply to them.

Q It did not apply?

A Right.

Q And you use the term, manufacturer's label and shipper's loads interchangeably?

A Right.

Q So 8(c) was the first time that rules on containers were placed in an agreement, is that correct?

A Yes, sir.

Q And it was a contention of New York Shipping that shipper's loads, if they were destined or going to a beneficial owner, would not be applicable to these rules on containers?

A Well, the words, beneficial owner, didn't show up for many, many years.

* * * *

[615] Now, going back to 1959 with the first rules on containers in the New York Shipping agreement, have you had knowledge that truckers for their own convenience have been stripping shipper's loads within the 50-mile radius of the port area?

A Well, where that happened, that's a violation of the contract.

Q All right. Have you had knowledge that truckers were doing that since 1959 in the Port of New York?

A We have had lots of grievances filed about it.

Q So you knew that truckers were doing the stripping of shipper's loads at their own transport facilities within a 50-mile radius?

[616] A Well, I knew that they were trying. There were many grievances filed. There were hearings over it; yes.

* * * *

FURTHER CROSS EXAMINATION

[618] Q All right. Back to the subject of a consolidated container load, would you agree with the definition of a consolidated container load as being a container load of cargo where such cargo belongs to more than one shipper on export cargo or one consignee on import cargo?

A More than one on export and one consignee on import? Yes, that's a consolidated load.

* * * *

[621] Q Let me ask you what the word, consolidate, means to you? What does one do when one consolidates freight?

A You put it together.

Q Put it together. All right. Let's take some specific examples, now, instead of dealing with——

If I've got a container and I pick it up destined for some point more than 50 miles from the center of the Baltimore port to a single consignee, I pick that container up and break the seal on it at my terminal and determine that the load is imbalanced, that there is too much weight on the back of the container to suit my operation and needs. So I move the load to the front of the container.

Have I consolidated it?

A You moved the load to the front of the container?

Q Right. I don't take it out. I just move it toward the front so that there will be more weight in the front than in the back.

A I can't imagine it happening, but I suppose it could.

Q Well, would I have consolidated that load?

A It's possible you did.

* * * *

[622] Q All right. Another example. What if, instead, I picked up a 20-foot box that I've got to haul through the State of Virginia and I look at the weight limitations that are effective in that state and find that I do not have a sufficient distance between my axles to allow me, under that state's law, to tow that box. What I do is to break the seal——

JUDGE WAGMAN: Excuse me. Mr. Auten. Anybody who wants to talk, there is a nice hall outside. There's going to be silence in here or I'm going to clear this place. This is not a ball park. Now, let's go.

Q (By Mr. Auten) So, what I do is strip the box and I take it out of that 20-foot container and, instead, put exactly the same contents and nothing more and nothing less in a container that belongs to me and take it straight to the consignee. Have I violated the rules, then?

A In my judgment, you have.

Q What have I consolidated, sir?

A The weight—— When you pick up the container, you are [623] aware of the weight. If the bill of lading said that it was owned by one person and going to that person's warehouse or that person's—not warehouse, but factory in Savannah or whatever place it is. When you picked it up, you knew the weight; and, as a trucker, I'm sure you would be aware of the restrictions. So, at that point, if you couldn't haul it over the road, it should have been stripped on the pier. That would be a violation, in my opinion.

* * * *

[630] Q Captain Haynes, going back a little bit in history, of handling cargo on the piers and whatnot, wouldn't it be fair to say that if a box arrived on the pier in any fashion destined to a single consignee, that that box regardless of its size is historically not opened up but has been loaded into the hold of the ship by the Longshoremen?

A If a box arrived on the pier destined to a single consignee?

Q Yes.

A A container, you mean?

Q A box.

A Oh, a wooden box, a crate of some kind?

Q I don't care what it's made of. A box.

A No. Yes, sir.

Q And let's say a box arrives on board a vessel——

A A box of what, sir?

Q Well, you name it. But let's say a box arrived on a [631] vessel and the vessel was to be unloaded at the pier and that box was addressed to one owner, or one consignee and was the apparent owner of the contents, now, historically over the years that box goes without being broken open straight to that consignee?

A Yes, because the box is owned by the shipper or the consignee.

Q And historically ILA labor has never broken into or opened up that box regardless of what the box is?

A That's right.

Q And that box could be just about any size; and you, historically over the years, have gotten boxes in many different sizes?

A Yes, sir.

Q And with containers, those boxes have gotten up to 40 feet in size, isn't that correct?

A Well now, that's a little different, though. The box, in this case, is owned by the steamship company. It's supplied by the steamship company.

Q Well, in many instances it is. It's not 100 percent true, is it?

A I realize it's not 100 percent true.

Q But that's still the same situation?

A No, sir, not with containers it's not the same situation.

[632] Q Well, I mean, the practice is not the same?

A No, the practice is not the same. Containerization is a new technology. To try to relate that to a package and a box and a crate is impossible. You're talking about, you know, apples and oranges.

* * * *

[639] Q (By Mr. Bohannon) All right. Captain Haynes, imagine, if you will, that the bill of lading or the contract or the document which controls the handling of the container or the cargo therein or both contains a specific provision giving the motor trucker the right to transfer that cargo from that container to another container or into any trailer according to the dictates of his business or client, as long as he gets it to his destination, as he is obligated to do.

Now, imagine those circumstances. He has that right. [640] Are you saying that the motor trucker causes a violation if he acts in accordance with a provision of his contract governing his movement of that container and goods?

A Does he cause a violation?

(A long pause)

Yes, he does, if he does something different than is provided in our agreement.

JUDGE WAGMAN: The answer is yes?

THE WITNESS: Yes, sir.

JUDGE WAGMAN: Regardless of whether the client asked the trucker to do it or somebory else or maybe the demands of the State of Virginia? What difference would it make?

As soon as the trucker does it, in violation of the ILA CONASA agreement, it's a violation.

THE WITNESS: Yes, sir.

JUDGE WAGMAN: If it is a container that belongs to——

THE WITNESS: Yes, sir.

JUDGE WAGMAN: Is that your answer?

* * * *

[642] JUDGE WAGMAN: All right. Does anybody have any questions?

I have one question. I have a different contract, perhaps, than you do. I understand the language is supposed to be the same. I have a contract here dated October 1, 1968, and it's the Hampton Roads agreement; and it has to do with the provisions. It starts out:

"These provisions relate solely to containers meeting each and all the following criteria." Do you have that language, Captain?

THE WITNESS: Yes, sir.

JUDGE WAGMAN: And it says here, "1. Containers owned or leased by employe signatory members——" And it says "including containers on wheels. But this is the one I'm concerned about: "——which contain LTL loads or consolidated full container loads." And the specific words I'm looking at is this: "Containers owned by employer signatory members which contain consolidated full container loads."

[643] Now, from your testimony, it appears to me that a trailer or container which comes off a steamship does not contain a consolidated load. It's just a load. And it becomes consolidated if somebody else handles the load, is that right?

THE WITNESS: Yes, sir. When the container comes off the ship——

JUDGE WAGMAN: It's not a consolidated load at that point?

THE WITNESS: ——at that point, they make a determination whether it's a through-shipment or a stripper; and that's the point where it becomes something.

JUDGE WAGMAN: Right. But it isn't consolidated until somebody handles it, right? In other words——

THE WITNESS: Yes, right.

JUDGE WAGMAN: Let's say it came off the Matson Line in San Pedro and it goes up to a public hauler and it says on the container Matson Line. All right. We'll say Matson Line signed this contract. So it's a container owned by an employer signatory at that point, assuming Matson was. All right. But it does not contain a consolidated full container load because there has not been any intermediate handling of the cargo. If that shipment were taken off the Matson container and put into a D.C. truck container of the same volume, you would then have a consolidation, wouldn't you?

[644] THE WITNESS: Then, it was a consolidated load which should have been stripped?

JUDGE WAGMAN: That is what is meant by consolidation?

THE WITNESS: The fact that they did something to it, that it stopped within the area, that made it a consolidated full container load.

JUDGE WAGMAN: Doesn't that stem from the traditional part of the industry, there was a man in the port who consolidated freight, which meant he took the freight from all over and and people brought it to him and he consolidated it, he packaged it or did whatever was necessary to get it on a ship and have it go some place?

THE WITNESS: Right.

JUDGE WAGMAN: So it doesn't necessarily have to mean taking stuff from four sources and making it into a container. It could be taking it from one person, but taking it out of the container it started in and putting it into another container?

THE WITNESS: That's the mirror image of the other end. Coming in, it's the pieces coming in and put

into a container. Now, it's coming in in one piece and is either put into something else or——

JUDGE WAGMAN: All right. Now, so therefore, if somebody is going to load a container belonging to D. C. Transit or D. C. Shipping or some other truck line, now, the container it's going into is not a consolidated container belonging to a [645] party who is signatory to your contract, is it?

THE WITNESS: No.

JUDGE WAGMAN: So I don't understand how you are able to interpret paragraph one as covering the cargo which is going into a container which belongs to somebody who is not a signatory, because it doesn't become consolidated cargo until the truck terminal handles it.

THE WITNESS: Yes, sir, but——

JUDGE WAGMAN: And the container it came in from the ship is not a container which contains a consolidated full container load.

THE WITNESS: Yes, sir, but that is exactly what we are talking about. We are talking about—— The jurisdiction of the ILA was that this stuff came to the pier and those trucks came down to the pier and got it and that was their work. Now, you want to take that over here and do it over there. And that's why it's wrong.

JUDGE WAGMAN: I understand that. But, you see, I have trouble with the language of this contract. I have very much trouble with that. Because, see—— I don't want to repeat myself. But the point is that it only pertains to containers which are owned by employer signatories which contain either an LTL load or consolidated full container loads. And when that load comes off the ship, it's not yet a consolidated full container load. It's just a load.

* * * *

REDIRECT EXAMINATION

[646] Q (By Mr. Gleason) Captain, on the 1968 agreement in Rule 1(a) and it talks about LTL loads or consolidated full container loads, does that say anything about export or import cargo?

A No.

Q Okay. Now, I will give you a situation. I am General Electric and I am putting a container load of

goods together in Germany and I buy 100 units from one company and buy 100 units from another company and eventually I've got five companies I'm buying goods for and I put it in a container. Is that a consolidated full container load?

A Yes, sir.

Q Okay. It is now consigned to Chicago. And it's going to General Electric's plant in Chicago.

A Yes.

Q Would that be a shipper's load?

A Yes, sir.

Q Okay. Now, we have a, quote, "consolidated load," which is also a shipper's load.

A Right.

[647] Q Okay. Now, the moment we take that container and we give it out in transit, General Electric says, "I don't want it to go to Chicago. I want to take it and I want to make a distribution within the 50-mile radius of Norfolk." And he sends it to the XYZ company and it's stripped there. Is that a violation of the contract?

A That's a violation.

Q Okay. Now, what is the difference between giving it to XYZ company and giving it to a trucker who takes that container and strips it at his place and put it on his truck for distribution outside the 50-mile radius?

A There's no difference. It's the same thing.

* * * *

RECROSS EXAMINATION

[657] A My answer to his original question, he said is those two clauses the same, does the wording mean the same. And a cursory examination indicates that they do, that a consolidated full container load and a consolidated load is the same.

* * * *

[665] JAMES J. DICKMAN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[666] Q Could you give us your prior career, that is, the work that you did prior to becoming the president of New York Shipping Association and the president of CONASA?

A I started in the shipping business over 30 years ago as a Longshoreman, checker clerk and, after being discharged from the Marine Corps in 1946, started in various capacities with stevedoring companies from assistant superintendent up to the present, chairman of the board and chief executive officer of Universal Terminal and Stevedoring Corporation in 1968.

Q Now, prior to going with Universal Stevedoring and Terminal Corporation were you employed by any other stevedoring company?

A Yes, I was, by the Jarka Corporation.

Q And could you tell us the ports in which the Jarka Corporation operated?

A It operated in all ports in the North Atlantic and some ports in the South Atlantic.

Q Could you tell us the ports in which Universal Stevedoring operated during your employment at Universal Terminal and Stevedoring Company?

A In Boston, New York, Philadelphia, Baltimore, North [667] Carolina, New Orleans, San Francisco, Oakland and other ports in the California area.

Q As a result of all of your experience with respect to stevedoring and terminal operating, you were here yesterday, were you not, Mr. Dickman?

A I was.

Q Did you hear the testimony of Captain Haynes with respect to the traditional work jurisdiction of the Longshoremen?

A I did.

Q If you were asked to testify with respect to the work jurisdiction of Longshoremen in all the ports in

which you have had experience, what would your testimony be?

A I would testify the same way.

* * * *

A It was.

[670] Q Mr. Dickman, approximately when would you say that containerization as we know it today came to the Port of New York?

A As we know it today, it started roughly in 1957 but grew to a major contention in 1959.

Q And, over the years, what operators normally engaged in containerization?

A I don't understand.

Q From the period of 1959 through 1966, what trade was containerized?

A Oh, primarily the Puerto Rican trade.

Q Did there come a point at a later time when containerization spread to other trades?

A Yes, it did.

Q And approximately when was that?

A We actually started to see it grow to a larger extent just prior to 1968.

* * * *

[673] Q And what other instances would that be?

A Well, if it was supposed to go to a warehouse and it was a full load and it didn't go there, that was one instance. I know of few others.

Q If it went to a distribution station?

A If it went to a distribution station or a consolidation station, of course, that was——

Q So that in each and every instance where the cargo was short-stopped, whether at a trucking station, distribution station, warehouse or what-have-you, the rule was the same?

A It was the same.

Q Now, after the 1968 negotiations, did you remain active in the Maritime industry in various ports?

A Yes, I did.

* * * *

[674] Q And since you became president of CONASA, have you participated in all of its affairs and have you,

as the chief executive officer administered all of the business of CONASA?

A I have.

Q Could you describe the functions of CONASA for the Court, please?

A Well, the functions of CONASA was to try to get uniformity in the ports from Maine to Hampton Roads, and that we would be able to negotiate with the Union on seven master items in the contract and that we would have uniformity in approach and our collective thinking as to the problems of the various ports so that they would remain the same in all ports.

Q Now, after CONASA adopts its collective bargaining agreements as negotiated with the International Longshoremen's Association, are such agreements normally the lead followed by all other ports on the Atlantic and Gulf Coast?

A It is.

Q Did you participate, Mr. Dickman, in the 1971 negotiations between CONASA and the ILA?

A Yes, I was the chief negotiator in 1971.

[675] Q What was one of the major issues in that negotiation?

A Containerization.

Q Had containerization by this time began to spread from the Port of New York to other ports?

A Yes, it did.

Q Was the issue of containerization one that involved a great amount of time and acrimony in negotiations?

A It was the greatest amount of time.

Q And was there a strike in the 1971 negotiations?

A Yes, there was.

Q Did containerization contribute to that strike?

A Yes, it did.

Q And how long a strike did we have in that period?

A 56 days.

Q What was the result of the 1971 negotiations with respect to containerization, Mr. Dickman?

A The results of—— Well, we had the Taft-Hartley. We went back to work in February; and we rewrote the rules on containers. We also agreed that we would have

a joint CONASA-ILA meeting on a quarterly basis to discuss the problems of the various ports, once again to attain uniformity with all the ports.

* * * *

[683] Q Now, after the October 1, 1974, effective date of the rules on containers, did the various problems on containerization continue?

A Almost immediately.

Q And did CONASA continue to have meetings with the ILA with respect to—

A Yes, we did. We had a meeting, I believe, it was again in December of 1974, I believe, in Miami to try to work out some of the problem.

Q Well, what was the position of the ILA at these meetings?

A That the steamship carriers were still violating the agreement, that they were giving their freight to phony warehouses and so forth, and that would have to stop or they [684] were going to have to open up the contract.

Q Did the ILA tell you what they meant by phony warehouses?

A Yes, they did. We have inspectors who go around the port. We saw after willing the warehouse rules, that warehouses were springing up in the port with perhaps 10,000 feet of cargo, and the investigators would catch 40 or 50 containers in the so-called warehouses within a period of six days and you knew it was physically impossible to put the cargo into these so-called warehouses and let it remain there or that they were bona fide warehousemen; and, as a result, the ILA said that this can't be done, this is wrong, it's not the intent of the warehousing rules; and we will open up the contract under clause eight if it continues.

Q Was that testimony you have just given also the subject of discussion at a later meeting after the December meeting in 1974?

A Yes. In January of 1975—— No, strike that. We had so many meetings with it by ourselves. But in March of 1975, Mr. Gleason demanded a CONASA-ILA meeting be held in Tarrytown, New York, because by this time he was very upset.

Q And where was that meeting held?
A In—— I forget the name of the place, but it was in Tarrytown, New York.
Q Tarrytown Conference Center?
A The Tarrytown Conference Center, yes.
[685] Q And what was the result of that meeting?
A The result of the meeting was that Mr. Gleason served me notice that he was reopening the contract under Section A of the 1974 contract, which had a 30-day cancellation clause on the container rules.
Q After the serving of that 30-day notice, Mr. Dickman, what did CONASA do?
A CONASA immediately went into negotiations with the ILA for the entire period; and, at the end of the 30 days, it was not acceptable to the ILA and they served notice of a cancellation of the container rules in the 1974 contract.
Q The notice had been served, you stated earlier, in March?
A I believe it was March 26th, to become effective April 28th. Because I think the 26th was on a Saturday. The 28th of April, 1975.
Q And, during the intervening 30-day period, you testified that there were negotiations and no agreement was reached?
A That's correct.
Q What happened at the end of the 30-day period?
A The union told us that there would no longer be any warehousing, there would no longer be any export warehousing, and that we had to do something to stop these so-called phony warehouses from taking their work away from the port.
Q Did the union permit some containers to move?
[686] A Yes. They permitted to move that were outside the 50-mile radius and containers that were manufacturer's label within the port.
Q After the rules on containers had been cancelled on or about April 28, 1975, did CONASA continue negotiations with the ILA?
A Yes, we did. We had two meetings at the Skyline Motor Inn in New York City, with additional container

carrier principles in attendance along with the CONASA negotiating team.
Q Now, were there physically present at that meeting representatives of all principle container carriers?
A Yes, there were.
Q All right. What was the result of the negotiations?
A Finally, on—I believe it was May 30th, 1975, we agreed that the warehousing rules would remain in effect, provided the cargo stayed in for the 30-day period, that there was to be no export warehousing and that there was to be formed a council or a Steamship Carriers Council of container operators to assist and be present with us at future CONASA-ILA meetings to, as I say, assist and understand some of the problems that they were not privy to before and would be there at these meetings.
Q And have the May 31, 1975, rules on containers remained in effect to the present time?
A They have.
[688] Q Now, will you look at Rule A and first define for me what an LTL load is?
A An LTL load is less than truck load.
Q What does that mean?
A That means that if you don't have a full container of a commodity, it's less than a truck load.
Q Okay. Now, the next word is consolidated full container load. What is that?
A That means that the container is full of a commodity for a consignee.
Q In a consolidated full container load, do you have goods of more than two shippers or more than two consignees?
A It's a single consignee.
Q Are there goods of two shippers contained in the container?
A It could be.
Q How is a consolidated full container load different from a manufacturer label load?
A A manufacturer's label is the goods of the man who has just one commodity.

Q How is a consolidated full container load different from a shipper's load?

A A shipper's load could be one shipper to a consignee.

Q So what you are telling me is there is a difference between a consolidated full container load and a manufacturer's label and shipper's load?

[689] A That's correct.

Q Now, the rules in the 1968 agreement state or relate solely to containers meeting each and all of the following criteria, is that correct?

A Right.

Q And we talk about LTL loads and consolidated full container loads. Now, I'm showing you General Counsel's Exhibit 4, which is the Hampton Roads agreement with the rules on containers contained therein; and I ask you under definitions, to look at a consolidated container load.

A I am not familiar with this agreement.

Q Oh, I'm sorry. Would you read that, please?

A What do you want me to look at?

Q The definition of a consolidated container load.

A It says, "Consolidated container load means a container load of cargo where such cargo belongs to more than one shipper on export cargo, or one consignee on import cargo."

Q Now, you would be familiar with that, would you not, since those are CONASA's rules on containers which were inserted in all CONASA agreements?

A That's right.

Q Okay. Now, is it not a fact that a consolidated container load is the same definition as a consolidated full container load which is contained in your '68 and '71 agreements?

A I would say it is.

[690] Q Thank you. Now, in Respondents' 13 if you will turn to Number H and if you would briefly review it, please

A It says, "If for the purpose of protecting or preserving the present work jurisdiction of Longshoremen and all other deepsea ILA crafts over any containers loaded

with LTL cargo or consolidated full container loads as defined herein, is not accomplished by the provisions of these rules on containers, then, either party shall have the right to renegotiate the provisions or any part thereof by giving notice to the other party. This provision shall not be subject to arbitration."

Do you want me to read the whole thing?

* * * *

Q Now, as I understood your testimony, you had a strike of 57 days prior to the 1971 negotiations, and it was the contention of the ILA that they wanted to strip all containers, [691] to stuff and strip all containers, is that correct?

A That was their initial position, yes.

Q And a compromise was reached in that containers going to a beneficial owner within the 50-mile radius would move freely, is that correct?

A Correct.

Q And containers going to a consignee outside the 50-mile radius would move freely?

A That's correct.

Q And these are known as shipper's loads?

A Right.

Q And you testified that approximately 80 percent of containerized cargo would fall into those classifications?

A Would move freely; that's right.

* * * *

[692] Q You spoke on direct specifically as to the tonnage. In 1968, you said seven million tons of containerized cargo.

A If you want to use a rule of thumb, you can take 80 percent of that and say that 80 percent of it was either shipper's loads that were outside the 50-mile radius or manufacturer's label that was inside the 50-mile radius.

* * * *

[694] Q What was the reason that ILA consentend to allow manufacturer label and shipper loads to go through without being stripped at the pier?

A They always did.

Q So they've always done it?
A Oh, yes.
Q Since the first time the containers came in?
A Since 1959, there was a manufacturer's label that was outside the 50-mile radius and there was no problem.
Q So, historically, this was always the policy of the International Longshoremen's Association?
A That's right.
Q When did discussions first appear with respect to royalty payments on shipper's loads?
[605] A That was the Stein award in 1960.
Q So commencing in 1960, did the ILA get a per diem or an amount of money based on the tonnage as a result of shipper's loads going through and not being stripped at the pier?
A No, the ILA got a—— I suppose the ultimate reason for it was that they made some concessions not only on shipper's loads but on manufacturer's label or cargo outside the 50-mile radius; but the award was based on the type of vessel in those days and still remains the same; and it was 35 cents on a break bulk ship and 70 cents on a semi-automated ship and $1.00 on a fully containerized ship. That's per gross ton.
Q Per ton?
A Per ton.
Q So on a full shipper's load that was going through to a consignee outside the 50-mile radius, they would receive a dollar a ton?
A That's correct.

* * * *

CROSS EXAMINATION

[700] Q Has any employer member of CONASA not adopted the rules on containers?
A Their bound by the majority to all of it. I don't remember us having a dissent; but the CONASA bylaws state that the majority will rule, and all ports will adopt it on an equal basis.
Q Now, have there been different interpretations with respect to the rules on containers in each of the port areas who have adopted these rules?

A Well, there may be misinterpretations; and there's misinterpretations within the same port the day after we think what we know what we are talking about. But it's merely a language problem and not a practical problem.
Q Well, with respect to the public warehouse, is it not a fact that New York, that you allow employees of a public warehouse to strip containers destined to a consignee?
A If it remains in the warehouse over 30 days.
Q What if it doesn't remain in the warehouse for 30 days?
A Well, prior to our dispute in 1974, if it was a matter of inventory taken out and it was a bona fide warehouseman, then, we allowed that cargo to move. But, in most cases, a [701] bona fide warehouseman, his cargo would remain in the warehouse over 30 days.
I know that there has been some disagreement on some of the other ports; but, until it was explained to them not by us but what the intent of the warehouse rule was by the ILA, then, it was changed. But I think that there was a misunderstanding, and that's why we had a difference of opinion. But now, those are part of the items that the various ports may have minor misunderstandings about; but the contract was exactly the same.
Q Would you say if HRSA wants to follow the lead set in New York with respect to stripping in warehouses, that they should be allowed to——
A It's not want the lead says; it's what the contract says.
Q Well, if New York interprets the contract in one way, should not the contract be applied the same in all ports?
A That's why we have CONASA-ILA meetings. If there is a misunderstanding, that is placed on the agenda, whether it be warehousing or anything else; and it is discussed at the next joint CONASA-ILA meeting and then we try to put to right if there has been any misunderstanding.

* * * *

[703& Q On a bill of lading, there is no restriction with respect to a motor transport carrier stripping a shipper's load at his facility, is there?

A There probably isn't.

Q There probably isn't?

A Isn't.

* * * *

[705] Q So you have no control or no business relationship with motor transport carriers?

A Absolutely none.

* * * *

[707] Q (By Mr. Rosenstein) You told me that consolidation is putting cargo into a container, is that correct?

A That's correct.

Q All right. And, at the pier, you could put cargo into an employer signatory's container, is that possible?

A With deepsea ILA labor, right.

Q Okay. So when you talk about consolidation, are you talking about utilizing employer signatory containers?

A Yes, with deepsea ILA labor.

Q If employer signatory containers are not used, isn't it a fact that they couldn't come under your rules on containers?

A That's correct.

Q Following that question, isn't it a fact that a trucker would put cargo onto his own 45-foot containers; and those containers are not employer signatory containers?

A That's correct.

* * * *

[709] Q Now, at that meeting, the rules on warehouses with respect to 2(b)(4) was negotiated?

A The original warehousing was discussed in the '74 contract; and it was codified at Dublin.

Q Well, Dublin was in 1973, right?

A Dublin was 1973, right. And then, it was put in in 1974.

* * * *

[711] Q Prior to the negotiations in 1973 of 2(b)(4) of the 30-day warehousing, was it not the practice of the deepsea ILA labor to strip cargo as they did during the 30-day suspension?

A No.

Q What was the practice, then?

A The practice was and the practice in the Port of New York, going back 75 years, now, was New York is predominantly a warehouse port going back to the days of break bulk when you couldn't get all the cargo on the pier—— And I hope I'm not making a speech. I'm just trying to give you the history. ——that warehouses were used. They were bona fide warehousemen [712] in the Port of New York. The ILA has always worked with the bona fide warehousemen; and, in 1973, and in 1974, many many new warehousemen came in and claimed that they were abiding by what the steamship carriers agreed to on the warehousing rule but they couldn't possibly physically get the cargo in the warehouse. So, therefore, it was a violation.

Q Do you know the procedure in the Hampton Roads area between 1968 and 1973, with respect to loads that were going to a warehouse?

A I believe that it was stripped during that period.

Q Okay. So, in Hampton Roads, then, the same procedure that took place during the suspension of the rules took place between 1968 and 1973 before the Dublin Rules were negotiated?

A Yes, I do; and I believe that there was claimed a misunderstanding; and it was finally straightened out by the ILA.

Q So by the cancellation of the rules on containers, the ILA went back and accomplished the work in a manner they previously did in Hampton Roads in 1968 and 1973?

A I guess that's a fact.

* * * *

[713] Q Mr. Dickman, let me give you an example, hypothetical.

Let's say you had a container that was destined for Louisville, Kentucky, picked up in Hampton Roads; and

the container went approximately 290 miles and, all of a sudden the cargo shifted and the trucker couldn't go on because of safety [714] precautions. And this happened 290 miles and he had another 190 miles to go to Louisville. And he had to open up the containers. At this point, he is outside the 50-mile radius of the port area, correct? Is that a violation of the contract?

A The cargo shifted and it was damaged, no, there would be no violation. That's an exception.

Q That would be an exception. Are you sure?

A I am sure.

* * * *

[719] Q And the employer members such as U. S. Lines would then notify the broker that that container is there and it can be picked up for delivery to the consignee?

A I would assume that's so.

Q So the procedure just flows normally based on the fact that the documentation indicates that it's a shipper's load, correct?

A Right.

Q So the first time that the container is actually weighed would be when the motor transport carrier gets it to its facility?

A That's not a fact.

Q When it's weighed at the terminal?

A But in most cases, at least the cases that I know about, it's weighted at the gate of the terminal operator's place or the steamship carrier's place; and most people have scales on their pier.

Q All right. So, at that point, then, the steamship carrier realeases a container or a shipper's load after it has been weighed, is that correct?

A That's correct.

Q He doesn't make any determination as to whether it's safe to pull it over the roads—the steamship carrier?

A He has nothing to do with it.

* * * *

[723] Q So that it was not until 1970 when the rules were negotiated? For the other ports.

A 1971.

* * * *

[730] Q Mr. Dickman, on direct examination, you did testify as to the definition of a consolidated load that's contained in the '74 contract; and, that definition says that, in case of imports, that it's a load with goods destined or going to more than one consignee?

MR. LAMBOS: I don't think the witness testified to that on direct examination.

MR. AUTEN: Cross examination. Pardon me.

JUDGE WAGMAN: Right. Thank you.

Q (By Mr. Auten) You agreed with the definition that's included——

A I read it.

Q And you said that's the same definition that had theretofore been applied to consolidated loads?

A Yes.

* * * *

[734] Q All right. Do you recall two other documents that came out of both of those meetings? One was entitled enforcement of rules on containers—— Well, do you recall that one?

A Yes.

Q All right. That document was actually drafted prior to the Dublin meeting, was it not?

A It could have been. It was discussed there many times before.

Q And, sir, did it not presume—did that document not presume that the definition contained in interpretation one point one had already been agreed upon?

A It could have been.

Q I want to ask you just a moment, Mr. Dickman, about the Stein award.

First of all, what is a gross ton?

A Twenty-two hundred and forty pounds.

Q And when you refer to the royalty being paid on a gross ton, gross ton of what?

A Gross ton of the cargo.

Q The contents of the box?
A Contents of the box.
Q All right. Now, has the amount of royalty paid changed [735] since the Stein arbitration award?
A Has the amount changed?
Q Right.
A Yes. The second dollar was negotiated in the 1968 negotiations.
Q Well, that negotiation was between CONASA and ILA?
A In 1968, it was New York and ILA.
Q New York Shipping Association?
A Right.
Q What is an approximate labor cost for stripping a ton of freight from a container?
A You will have to tell me the type of freight.
Q Well, let's say——
A The homogenous nature of it.
Q All right. Let's take an example palletized freight, say, 19 skids in a container that would be unloaded with a forklift.
A I would say that that could be done in less than an hour. It would require, in most instances, a Hi-Lo driver plus the cost of the Hi-Lo, and a checker for a half an hour and maybe $30.00 to take out the link from the skids.

* * * *

[737] Mr. Dickman, we have established that there was a difference in the way that loads going to a warehouse were treated in New York and Hampton Roads, is that correct?
A Someone told it to me.
Q Do you feel like the interpretation of the rules that existed in New York was the correct interpretation?
A That was the CONASA contract; that is the correct interpretation.
Q Your position is that the New York port handles that interpretation correctly.
Now, on what basis did you feel that—— Let me get into a specific example. I've got a full shipper's load which is consigned to or going to a warehouse in New

York, one shipper. Now, what happened in New York to that container when it hit the dock?
A It went to that warehouse, and it was discharged and the container was stripped at that warehouse—at the bona fide warehouse with the warehouseman's own employees.
Q Where does the contract that was in effect at that time say anything about warehousing?
A This was always the case in New York. We didn't have to write anything; we knew it.
[738] But did the contract itself say anything about warehousing?
A It didn't have to.
Q In fact, your interpretation was based on a movement of the full shipper's load, wasn't it, just the same as a movement to a single consignee in West Virginia some place?
A Right.
Q Now, did the ILA at the Dublin negotiations contend that that was an incorrect interpretation of the contract?
A Contended it was incorrect?
Q Right.
A I believe that they contended that it was correct.
Q That that was a correct interpretation of the contract?
A Right.
Q So would it have been their position and CONASA's position that nothing was given up by the ILA in the new warehouse rule that came out of Dublin?
A They always have; they've always done it in New York.

* * * *

[753] THOMAS W. GLEASON, SR.

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[754] Q Could you tell us briefly what was the traditional work jurisdiction of the ILA up until containerization prior 1959?

A All the freight to the piers. The trucker drivers put it to the tail of the truck; and we took it off and placed it on the dock floor or dock or placed it on pallets. On the reverse coming in, we had what we called pallet loaders or loaders, where the truck would come down and we loaded the trucks. They would pick it up and take it right to the consignee's place of business.

Q Now, prior to 1959, was there such a container used in the handling of cargo?

A Yes.

Q Could you tell us the type of containers that were handled?

A Well, there were wooden containers. Some was Bowling Green that was testified here today which was household goods. There were small containers—wooden containers, that we used to carry special cargo in. And then, there was Dravo type containers that were brought down to the piers to store valuable * * *.

* * * *

[760] Q Well, now, in 19—— Well, before we get there, can you give us a comparison between the loading of a conventional ship and a container ship, with reference to manhours?

A All right. If you take a 100,000-ton ship, a conventional ship, in and out, it's in the neighborhood of 12,000 manhours. You take a container ship 10,000 tons in and out, you've got 2200 manhours. So your productivity has increased 500 percent.

* * * *

[767] Q Going back to the 1959 negotiations when you had that contract, was there an arbitration with reference to a royalty fund?

A There was. I sat in with McCarty and Professor Stein.

Q And do you recall what that amount was?

A Yes. It was 35 cents for a conventional ship, 70 cents for a conventional ship that had two hatches auto-

mated and $1.00 for a conventional ship or a full container ship and anything over three hatches automated in a conventional ship was a dollar.

Q Now, from that time up until 1968, was that money used for the various welfare pension funds in the Port of New York?

A It was.

Q Now, in 1971, was that amount increased?

A It was increased—— The recommendation came, and when we talked about our funds to make sure our funds would be solvent, because of the increased productivity and the decrease in the manhours worked in the port, that something be paid on tonnage; and the operators would not agree to this, but they came up. The recommendation came from the operators or the steamship people that another dollar royalty be placed on it to be used for welfare, pensions, clinics, and what-have-you.

[768] Q So it was used for the fringe benefit funds—to maintain those benefit funds?

A Right.

* * * *

[774] Q Now, did you reach an agreement?

A We did.

Q And could you tell us the charges, if there were any, with reference to warehousing with those changes?

A As far as my memory serves me, there were no changes except a reaffirmation of what the intent of the contract had been over a period from 1959 on, the same reaffirmation was made.

Q Was it a question of the 30-day provision of a bona fide warehouse?

A That was discussed. That was. Because it was going in one door and out the other, in 24 hours; 30 hours was the maximum it was staying there.

Q Now, you have testified as far as manufacturer's load. Now, has the—— And I will give you an example. If a container load destined for delivery to a consignee outside [775] the 50-mile radius is sent to a trucker's terminal and there either stripped and put into a truck or two 20-foot containers stripped and put into a 40-

foot truck for delivery, would that be a violation of the contract?

A That's a violation.

Q Was that a violation in 1959?

A It was a violation 1959.

Q Has it been a violation from——

A And it's still a violation today.

* * * *

CROSS EXAMINATION

[785] Q All right. So going back to 1959, didn't the International Longshoremen's Association agree to allow manufacturer's labels and shipper loads to go through to the consignee without being stripped at the pier?

A Right.

Q And, in return for that right, you negotiated a royalty payment on each of those containers?

A No, we got an award by an arbitrator.

Q In 1959.

A Right.

Q So for each manufacturer's label or shipper load that was not stripped at the pier, the International Longshoremen's Association received $1.00 per gross ton, is that correct?

A On a full container ship.

Q Right.

A On a conventional ship with two hatches automated, 35 cents, three hatches automated or more $1.00.

* * * *

CROSS EXAMINATION

[789] Q Well, all right. Let's talk about just what it says in your contract. It says a consolidated full container load. Now, does that mean that you have either goods of two or more shippers in one container that is going to one consignee or you have goods of one shipper that is going to two or more consignees?

A In reading this, in my opinion, it would mean more than one shipper, or one consignee.

Q Okay. So that is different, that number one, LTL and consolidated full container loads, that's different from manufacturer label or shipper load?

A That necessarily wouldn't be so.

Q Well, but didn't you just tell me that a manufacturer's label was going from one manufacturer to another?

A That's right.

Q And a shipper's load is going from one shipper with goods to one consignee?

A Right.

Q Okay. So aren't those terms different?

A Than a consolidated——

Q Right.

[790] A Right. They are, yes.

Q That was my question. So they are different?

A Right.

Q Okay. Now, the 1968 rules speak of only LTL loads and consolidated full container loads, is that correct?

A That's what this book says, that's right.

* * * *

[801] Q And, besides that, Mr. Gleason, you carefully consulted with your counsel as to what the legal effect of these rules that you were negotiating was, did you not?

A No, I didn't have to consult with the counsel. And the counsel that was at the '68 meeting was not Thomas Gleason, Jr. He was a participant; but Mr. Waldman was the general counsel for the ILA. But I did not have to consult with him.

Q But you did have legal advice and consultation as to what the language of the rules meant?

A I thought we all knew what they meant.

Q Well, the contracts, Mr. Gleason, and we have stipulated that in all material respects the additions of the contract that were entered into in '68, whether they are on the CONASA page or whether they are in these booklets, are the same rules in the '68 and '71 contracts. Now, both of those contain the following language:

"If the purpose of protecting and preserving the present work jurisdiction of Longshoremen and all other deepsea ILA crafts over any containers loaded with LTL cargo or consolidated full container loads as defined herein is not accomplished by the provisions of these rules on

containers, then either party shall have the right to renegotiate these provisions or any part thereof by giving notice to the other [802] party."

Now, you and your counsel very carefully considered what that language meant, did you not?

A Right.

Q Now, did it never occur to either of you or any of you that when you were talking about your work jurisdiction in that paragraph and you were talking only about LTL and consolidated full container loads, that it might be necessary if you still claimed the right to strip manufacturer's label, that you ought to say that you still considered that your work jurisdiction?

A Well, I think we gave a lot of consideration to a lot of things at that time and especially the violations that was going on where there were supposed to be shipper's loads, as my friend wanted me to say and which I call manufacturer's label, that there were some violations of these where they would take and billed, the documentation was phony documentation and they were billed as full manufacturer's label but we found out in an investigation that they weren't always that way. And we considered that.

Q Yes, sir. And I understand that you considered that, because you put it in the contracts that false documentation was a violation.

A Right.

Q That covered that.

[803] A That covers the manufacturer's labels, that they are phonies.

Q Right. Now, there is a document in evidence—and whether you have seen it or not, it is your testimony that the number of longshore employees and the number of manhours that they have worked have gone down very drastically over the last several years?

A Right.

Q Now, the reason for that, is it not, sir, is because there is a vastly increased amount of container business coming through the port?

A Right.

Q Now, that is why the work has diminished. It's not because Mr. Houff for reasons sufficient to himself strips a container, is it? It's the fact that there are more containers?

A I don't know about Mr. Houff's business, so I can't answer about Mr. Houff. All I am saying to you is and to the operators is that I have insisted continually upon what we agreed in the 1958 contract and we have never deviated from that. Now, I have no interest in what Mr. Houff or any other truckman does.

Q But, Mr. Gleason, it is true that you were reconciled, were you not, to the fact that these containers were going to move from the dock on out to the consignee without any ILA labor?

[804] A Yes, I guess I did.

Q You are reconciled to that fact and you were going to get a royalty on those containers that moved that way?

A Right.

Q Now, you have also referred to what used to be known as customs and practices.

A Right.

Q Now, those have always been or have since 1959, at least until 1968, customs and practices were exceptions to the rules on containers?

A This is what we understood, what the customs and practices were, what we talked about in 1958 and the '59 contract was whatever the practices were as far as the LTL and consolidated containers, we would carry that out. And we are still doing that to this day.

Q Well now, it was the custom and practice, was it not, and didn't members of the shipping association so contend that it was the custom and practice for a motor carrier to strip and reload if a container was overloaded?

A I have nothing to do with that. That's their business. I had nothing to do with that. The ILA has nothing to do with that. I think that the testimony—— Do you want me to go ahead?

* * * *

[809] Q And it's also come to your attention as president of the International that some of these shipping

employers with whom you contract, when Mr. Houff says, "I'm not going to pay your fine," they say, "You're not going to get our containers"?

A Well, I've heard that, but that's none of my business. I'm not involved in it.

Q When these things come to your attention, doesn't it have to follow that this is going to result in more stripping work at the dock?

A No, because we had this in our original agreement in 1959.

JUDGE WAGMAN: Mr. Gleason, Jr., I notice that when questions are asked, your head either goes in a horizontal motion back and forth or vertical. Now, I don't know whether you're answering——

MR. GLEASON: Absolutely not, Your Honor.

JUDGE WAGMAN: Your rhythm is too good. Your rhythm is too good. I think that you should stop moving your head.

THE WITNESS: I don't——

JUDGE WAGMAN: I didn't ask you.

THE WITNESS: I get it out of here in a minute.

JUDGE WAGMAN: I didn't ask you.

* * * *

[824] JUDGE WAGMAN: What was the longshoreman's job with respect to unloading the ship and the stringpiece. What did the longshoremen do in 1925, how far did he go towards West Street?

THE WITNESS: Well, he went all way to the gate.

JUDGE WAGMAN: To the gate of the truck?

THE WITNESS: To the gate of the dock.

JUDGE WAGMAN: To the gate of the dock. And then, wasn't there a trade in New York known as Public Loader?

THE WITNESS: Yes, there was.

JUDGE WAGMAN: And the public loader would take it from a little pile at the end of the stringpiece?

THE WITNESS: That was on import cargo.

JUDGE WAGMAN: Yeah. That's what we are talking about in this case.

THE WITNESS: Yes.

JUDGE WAGMAN: Now, wasn't that public loader peculiar [825] to New York?

THE WITNESS: It was.

JUDGE WAGMAN: There was a whole big business about that, wasn't it?

THE WITNESS: There was a big investigation.

JUDGE WAGMAN: But the point is that I'm trying to make is that the Longshoremen carried it to the end of the stringpiece, and another guy picked it up?

THE WITNESS: No, no.

JUDGE WAGMAN: Where did the public loader come in?

THE WITNESS: The public loader come in, Your Honor, when the truckmen come down to pick up the cargo for the consignee.

JUDGE WAGMAN: Okay. So somebody else put it on the truck, then?

THE WITNESS: No, the public loader put it on the truck.

JUDGE WAGMAN: But the Longshoremen didn't put it on the truck.

THE WITNESS: Oh, he was the—he was a Longshoreman; the public loader was a member of the Longshoremen's Union.

JUDGE WAGMAN: Oh, was he?

THE WITNESS: Oh, sure.

JUDGE WAGMAN: It was a different trade, but he didn't work on the stringpiece?

[826] THE WITNESS: No. Nobody worked on the stringpiece except the guy that made up the——

JUDGE WAGMAN: But the public loader was also a member—

THE WITNESS: Of the Longshoremen's Union.

JUDGE WAGMAN: But he was a member of that craft?

THE WITNESS: Yes, sir.

JUDGE WAGMAN: Gee. I didn't know that. I thought he was a member of another craft.

THE WITNESS: No.

JUDGE WAGMAN: Now, none of the harbors around here like in Hampton Roads, they don't have a public loader?

THE WITNESS: No, they didn't have them. They had freight handler outfits which were ILA, also.

JUDGE WAGMAN: So, in other words, the ILA used to take it from the hold of the ship to the back of the truck, right?

THE WITNESS: No, the ILA longshoremen took it from the hold of the ship and put it to a place of rest on the dock, wherever that may be. And it stayed there until it was cleared for customs, possibly five days or so; and then, the consignee would come down with his delivery orders and bill of lading, the same as he does today, with a container load and pick—and ask for his freight. Then, the company or the dock boss would turn this over and get public loaders who the consignee paid to load the truck and the public loaders would load that. And the funny thing about this, Your Honor, [827] was that they loaded it for three cents a hundred; and they were making money on it.

* * * *

JUDGE WAGMAN: How about in Hampton Roads and Baltimore?

THE WITNESS: In Hampton Roads and Baltimore I guess it's done by freighthandlers.

JUDGE WAGMAN: It's still done by freight handlers.

THE WITNESS: Right.

JUDGE WAGMAN: That's on a bulk——

THE WITNESS: On a bulk ship.

JUDGE WAGMAN: That's all I want to know.

MR. KELSEY: Those are ILA freight handlers you're speaking of in Hampton Roads.

THE WITNESS: Right.

[829] RICHARD PATRICK HUGHES

was called as a witness and, having been first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[830] Q Now, prior to 1959, did you handle containers in the port of Baltimore?

A Containers? The only containers I seen were containers that were used in conjunction with break bulk operations that were aluminum containers for Alcoa Steamship Line and some metal containers for Bull Line.

Q Could you give us the sizes of these containers?

A Well, the ones from Alcoa were small containers, maybe four by six by eight foot long. And they were aluminum containers made up apparently of Alcoa aluminum. And the ones for Bull Line were metal and they were just a little larger than the ones that I remember for Alcoa.

Q If those containers came and were discharged in the Port of Baltimore, how were the containers handled, did they go—were they free-wheeling and delivered directly to the consignee or were they——

A You're talking about in 1959?

Q Prior to 1959.

A Well, the only ones I seen as far as discharging was [831] concerned, all the containers were, you know, unloaded at the pier. In 99 percent of the cases, that cargo normally went into a locker on the pier because it had special cargoes in it; and, conversely, when the containers were being loaded aboard a vessel, you know 99 percent of the time, the cargo came out of a locker that was on a pier and there were special cargoes that were put into these small metal containers.

Q Now, when a consignee sent the truckman down with the delivery order prior to 1959, how was that cargo delivered?

A It was delivered by the ILA to the tailgate of the truck; and the truck driver actually loaded it into his truck and took it away.

Q Now, could you tell us when was the first time that there was a container ship operation in Baltimore?

A In April of 1963, the steamship line, Sea-Land, brought a ship in, the Mobile, which was a semi-auto-

mated ship. It had three hatches, self-sustaining; but I mean it had a crane aboard the ship itself. In other words, it could unload itself, you know, as today they've got the cranes on the pier. But this ship had its own crane on there and you had two hatches, number one and five, I believe, that were break bulk hatches that handle general cargo.

* * * *

[832] A Well, the contract that was in force in the Port of Baltimore was the end result of the Stein award that was awarded in New York; and it was actually started in '59 and I think we got it in the first part of 1960, you know, the first few months in 1960.

Q Were you present at the negotiations in 1959?

A Yes, in a limited capacity, though, as a recording secretary to the local only to the extent of my local's negotiation locally; not in the negotiations that took place in New York.

Q Now, after the Stein Award in Baltimore, was there an increase of containerization?

A Yes. It has progressively grown up until this year, which is the exception; and I attribute that possibly to the recession.

Q And with reference to the Stein award, then, there was a container royalty paid on the movement of certain types of containers?

A Yes, as testified, 35 cents on conventional ships, 70 cents on semi-automated ships and $1.00 on the fully automated ships.

* * * *

[833] Q Now, could you tell us the amount of money that was paid by the employer members of the association under the Stein award with reference to those types of containers that moved through the port from, say, 1963 up to the present date?

A I could. I have a piece of paper that I acquired this information the day before yesterday. Because between the years 1960 and 1971, up until the formation of the container royalty fund that is in existence today, the money went directly into the pension fund.

Q Could you give us a breakdown on each year?

A Yes, I have in parenthesis 1960 through 1963, $3,000.00 or $3,044.96.

* * * *

[841] Q Did you make any investigation with reference to his statements?

A Yes. His contention was that it was possible that other people in the ILA and the Shipping Associations in the North Atlantic did not concur with our position there. I personally called Mr. Thomas W. Gleason and asked him; and he said they were violations to the agreement. I called a man by the name of John Resta in Philadelphia. He told me they were in violation there. And I called Merritt in Norfolk, Virginia and he told me they were held in violation here. And I so reported back to the committee that I had talked to these people and that they say they are violations all over and that it was uniform.

Q Now, could you tell us with reference to rules on containers up until 1968 what the practice was in the Port of Baltimore with reference to the warehousing of cargo?

A There was no warehousing of cargo in the Port of Baltimore.

Q Was there a change made after 1968?

A Yes. I don't know the exact date. It was not too long before we went to Ireland. Again, there was a situation brought up where someone says that they permit them to warehouse cargo for 30 days in New York. And I subsequently * * *

* * * *

CROSS EXAMINATION

[845] Q So you mentioned that containers started in Baltimore in 1963.

A The first container ships, you know, that resembled fully automated ships we know today.

Q All right. And so there was a period of five years from 1963 until 1968 where you were not operating under a contract with respect to rules on containers, is that correct?

A Written rules is correct.

Q And, during that period of time, you had loads such as manufacturer's label which were coming in those containers, is that correct?

A Correct.

Q And now, you said on direct that you never heard the word, shipper's load, until the hearing today?

A Yes, sir.

Q All right. But to define a shipper's load, if I told you that it was one shipper's goods that were loaded overseas, came in on a steamship carrier that was going to a consignee would this not be a definition similar to a manufacturer's label?

A In that circumstances, yes.

Q All right. So, therefore, the history with respect to [846] manufacturer's label and the definition of a shipper's load that I just gave you would mean that historically ILA labor would not strip those loads at the pier area?

A Correct.

Q Now, from 1963 to 1968, shipper loads or manufacturer's label were going through the port area not being stripped by ILA labor?

A Correct.

Q All right. Truckers were coming down to the pier and picking up from 1963 to 1968 shipper's loads or manufacturer's label containers to get them to the consignee, correct?

A Correct.

Q All right. Is it not a fact, Mr. Hughes, that you knew during that period of time that truckers for their own convenience were taking those containers—20-foot containers to their facilities within a 50-mile radius, opening the seal and putting the cargo into their own 45-foot containers?

A No, sir.

Q You didn't know that?

A I did not know that, sir.

Q Is there any reason that would make you believe that you weren't doing it?

A I know they're doing it, now.

Q You know they are doing it, now?

A That's right. We caught them.

[847] Q Yeah. You sure did in 1968 through 1975, correct?

A Correct.

Q All right. So there is nothing for you to believe that they weren't doing it prior to that time?

A The only thing I can say they were doing it without the ILA's knowledge.

Q But they could have very well been doing it from 1963 to 1968?

A Certainly.

Q You don't think they just started it in 1968?

A I have no way of knowing.

Q Now, if you will look at the rules themselves that we have in the book, on page four, it talks about these provisions relate solely to containers meeting each and all the following criteria. It's on the bottom of page three.

A Page three.

Q That's on the bottom that I just read you, all right?

A All right.

Q And then, we talk about containers owned or leased by employer members which contain LTL loads or consolidated full container loads.

A Right.

Q Okay. There's nothing in there about manufacturer's load or shipper loads?

A No, sir.

[848] Q All right. And (b) says "Such containers."

A Right.

Q Now, doesn't "such containers" relate back to (a) meaning LTL and consolidated full container loads?

A Are you asking me if that is what it means?

Q Yes.

A Yeah, I think that's what it means.

Q So we're talking in (b) just about LTL loads and consolidated full container loads?

A Right.

Q All right. And (c) relates also with the 50-mile radius to LTL loads and consolidated full container loads?

A Right.

* * * *

[855] Q Now, you lost me, Mr. Hughes, because on direct examination, as I understood it, you told me that the 30-day provision, even though it wasn't negotiated in the contract, that that was the way the procedure and custom and practice was with respect to loads going into a warehouse, is that correct?

A No, you asked me between '65 and '68.

Q Right.

A But between '65 and '68 in Baltimore, there was no warehouse rules.

Q I see.

A In other words, that come a few months prior to whenever we had the meeting in Ireland. Just three months prior or four months prior to that. Somewhere around in that area.

Q All right. So you don't know whether manufacturer's labels were going straight into a warehouse and were staying one day or 30-days?

A The only thing I say is that we thought that the manufacturer's label was going to the manufacturer, all the way up until when I just told you. When our 30-day warehousing came into effect in Baltimore, they have to stamp on the dock receipt, delivery order, down at the pier. They have to stamp on there that we certify that this container—the contents of this container is going into a warehouse, name the warehouse and put the address on it.

Q Okay. Now, in '68 to '73, what procedures were followed [856] in the Port of Baltimore when a manufacturer's label or shipper load came in and was not stripped at the pier by deepsea ILA labor but went to a warehouse.

A They were found in violation of the agreement, between that period of time. There was no warehousing.

Q There was no warehousing at all during that period?

A No, sir. Up until just before we went to Ireland.

Q Well, during that period of time, isn't it a fact that deepsea ILA labor was stripping the containers at the pier and the warehousemen had to come down and pick it up in break bulk?

A Well, I don't know who picked them up. The truckers come down and picked them up.

* * * *

[861] Q Now, is it unusual for a container case filed that contained nothing more than three documents?

A Say that again, sir.

Q Is it unusual for a container case file to contain to just documents?

A No.

Q In other words——

A You get a lot of documents when they are found in violation subsequent appeals.

Q To your knowledge, did the union letters ever allege the provision of the contract which had been violated?

A No, sir.

Q They never have?

A No, sir. Not to my knowledge. Maybe they did originally; but recently they haven't done it.

Q Did you hear Mr. Dickman's testimony when he testified that it had been considered that when a trucker touched a full shipper's load at his terminal, that it then became a consolidated load?

A Yes, sir.

Q Do you agree with that?

A Yes, sir.

Q Well, was that the interpretation that was made by your container committee?

A My container committee?

[862] Q Yes.

A You mean the committee in Baltimore?

Q Yes.

A Yes, sir, that's their contention. It has been their contention, is their contention.

Q You say that your committee has said that when a trucker touched it, it in all cases then became a consolidated load?

A Well, I can't say that. I can only say that they said that it was a violation for a trucker to unload it. What they related it to, I don't know. I mean, the only thing I can say is that people presented arguments and then they voted.

Q But you didn't go around referring to that load, after the trucker had touched it as a consolidated load, did you?

A No, I referred to it as—that that guy is a distributor.

Q Let me ask you another question. When a trucker, a motor carrier, takes two 20-foot boxes and strips it and puts them into his 45-foot over-the-road trailer, is he consolidating in violation of the rules—is he stuffing in violation of the rules?

A Yes, he's becoming a distributor. That's my phrase. He's becoming a distributor of the cargo, which is a violation of the agreement.

Q Well now, it's true that your committee has referred [863] to that kind of operation as being both a stripping and a stuffing violation, isn't it?

A Yes, because conversely we have had manufacturer's products that went to—not a trucking station but went to a warehouse; and then, the warehouse loaded them for export cargo and they were found in violation of the agreement.

Q I'm not talking about that situation. I've got the one where the trucker is simply breaking down two 20-foot boxes putting their contents into a 45-foot trailer. And your committee has referred or has spoken of such operations as being stripping and stuffing violations, because you said they were—besides stripping, they were consolidating within the 50-mile radius.

A I don't remember that discussion at the meeting. No, they were found in violation for that container being stripped within the 50-mile radius and it should have been done at the pier with the ILA labor.

Q But, in any event, would you agree with me that you can't stuff a container that doesn't belong to a signatory member of ILA contracts and be in violation of the rules?

A If that's true, sure.

Q So if you're putting anything into your freight and you are not a party to an agreement with the ILA, you haven't violated any ILA contract, have you?

A The truckers do anything they want to do.

Q Well, then, they are not violating the rules for the [864] fact that they are putting it into their trailer, are they?

A We have nothing to say about the trucking companies. The violation was held against Masui Line, in the one case, Masui Line, you showed me; and the other case you're talking about—— I don't know what steamship line it was. U. S. Line. U. S. Line was held to be in violation of the agreement. Not Houff Transfer.

Q Well, U. S. Lines couldn't be penalized for something that Houff did to one of its own trailers, could it?

A I don't know about their trailer. I'm saying that they got fined for unloading the containers—two containers, they were fined $2,000.00. They didn't get fined another thousand dollars for loading it into another container.

Q That's fair enough. We are not talking about stuffing, now. We are talking about a stripping violation, correct?

A In that instance.

Q Okay. Now, if Mr. Houff simply takes the contents of a 20-foot box and neither adds to those contents nor subtracts from them but does take them out and put them into a trailer belonging to him, and that load still goes to the consignee, then, that's not a consolidated load, is it?

A Well, to answer you, I don't know. What you are talking about, to perfectly honest with you, I don't fully understand what a consolidated load is and what isn't, you know.

* * * *

[867] Q (By Mr. Auten) I refer you to General Counsel's 13, page six, paragraph "H" which is the contract between STA and ILA '74 to '77. I will refer you to paragraph "H" which is a definition of consolidated container load.

A Yes, sir.

Q And you see that definition. Is that definition any different than what a consolidated load had been considered from 1968 up to 1974?

[868] A Not to my knowledge, no.

Q All right. Now, then, when goods got moved to a different container or a different box or a different trailer and were going—still were going to one consignee at one place, then, that new box—that new trailer was not a consolidated load, was it?

A I'm going to answer your question. I'll say no to that question.

* * * *

[869] ALVAH J. MERRITT

was called as a witness and, having been first duly sworn, was [870] examined and testified as follows:

* * * *

DIRECT EXAMINATION

* * * *

[871] Q Are you familiar with the work jurisdiction in the Port of Norfolk with Longshoremen?

A I am, sir.

Q Could you tell us what that jurisdiction is?

A Well, prior to my becoming container inspector, we used to load the ships, unload the ships, load the trucks, unload the trucks, put the freight on the pier in preparation for the ship. In fact, the ILA handled all cargo to and from the vessel, at the pier.

Q Now, when was the first time that you handled a container as a longshoreman?

A Oh, I'd say the latter part of '68, perhaps.

Q And was that container on a conventional ship or was it on a——

A It was on a conventional ship, that's right.

Q And approximately in 1968 and 1969, how many containers would you say were handled through the port, do you have any idea?

A Oh, my goodness. A very minimum amount. Maybe a couple hundred or something like that, maybe.

Q Now, to your knowledge, were there any rules on containers in effect prior to 1968 in the Port of Hampton Roads?

A We didn't have any rules on containers in 1968 until the [872] contract of 1969. They were put into the contract in 1969.

Q But did you participate in negotiations in 1960?

A No, I did not.

Q And could you tell us in the handling of containers in the Port of Hampton Roads whether or not you ever heard the definition or the term Manufacturer's label?

A Certainly.

Q Would you tell us what manufacturer's label is?

A Well, our interpretation is one shipment from one consignee to another, direct without stopping enroute.

Q Now, when did you say you started as an investigator for the——

A October 1, 1969.

Q 1969. In that position as an investigator, have you found alleged violations with reference to the handling of containers by truck?

A Certainly.

Q And if a container which came from Europe or from a foreign port with import cargo and had a manufacturer's label, as such, and was going outside the 50-mile radius to be delivered to the ultimate consignee in the container, was that container stripped by ILA people?

A No, sir, it was not.

Q Did the funds in the Port of Hampton Roads receive a royalty on that?

[873] A In '68 we began to receive a royalty on the manufacturer's labels, yes.

Q When was the first time that you handled a full container ship?

A It was the latter part of '68.

Q And in that particular case, were manufacturer's labels permitted to go through the port outside the 50-mile radius?

A Yes, they were.

Q Now, prior to 1969, were there any rules in effect with reference to the handling of warehouse cargo?

A You see, prior to 1969 I was a longshoreman working on the dock and I was not aware of any rules, because I had no part of negotiations or anything of that nature.

Q In 1970, were there any rules on warehouse cargo?

A Well, according to our contract, in 1969, we began to police the containers with the rules on containers; and we would not allow any containers to go any public warehouses.

Q And that continued until when?

A Dublin.

Q Were you present in Dublin?

A I was.

Q And what happened after Dublin, what was the procedure?

A Well, we came back and had a meeting of the Association, and we implemented the warehouse rules which allowed containers to go to the warehouse to be stored for a period of 30 days, [874] the same as the contract.

Q Now, if those containers were manufacturer's loads went to a warehouse and was not in that particular warehouse for 30 days or more, was that a violation of the rules?

A Definitely.

Q And are you familiar with the opening of the contract that took place in approximately April, 1975?

A I am.

Q And were you present at the meetings in Tarrytown, New York?

A I was.

Q And were you present at meetings at the Skyline Hotel, in New York?

A I was.

Q And could you tell us what the problem was at that time with the handling of the warehouse cargo?

A Well, there were a lot of phony warehouses cropping up and, under the warehouse rules, and were receiving containers and the containers were not staying in there for a period of 30 days. So the ILA suggested that to stop the flagrant violations, we renegotiated the contract.

* * * *

[876] Q Now, after they renegotiated that contract in 1975, were there any changes in the rules on warehousing?

A No.

Q The rules, were they the same as prior to the 1974 agreement?

A Right.

Q Now, with reference to container locals, as manufacturer's label, if a container—if two 20-foot containers coming from Europe, discharged from a ship in the Port of Hampton Roads, was sent to a truckman, picked it up and took it to his place of business and stripped it and placed it in his own truck for delivery outside the 50-mile radius, was that a violation of the contract?

A It certainly was.

Q Was that a violation of the contract prior to 1970?

[877] A Definitely.

* * * *

CROSS EXAMINATION

[878] Q All right. So in 1966 and 1967, isn't it a fact that you knew that when truckers picked up shipper's loads and manufacturer's label at the pier, that they took them back to their terminal and stripped them?

A I didn't know that, no.

Q You didn't know that at all?

A No, sir, I didn't.

Q Have you ever been told that?

A No.

[879] Q Did you ever surmise that they were doing that?

A In '69 I found out that they were; but I didn't know it in '67 and '68.

* * * *

[880] Q And on a delivery order, there's nothing which says that he cannot strip that container at his facility?

A Right.

Q I show you a 1968 agreement and ask you on the rules on containers whether or not they apply to LTL loads and consolidated full container loads.

A Certainly.

Q All right. There is nothing in writing in those rules which talk about shipper's loads and manufactuer's labels?

A They are excluded.

Q And they were excluded because the ILA gave up the right to strip those at the pier when they were going to a consignee more than 50 miles from the pier area?

A Yes, I would say so.

Q And in 1968, you started under the contract to receive a royalty payment for each shipper's load that was not stripped at the pier by deepsea ILA labor?

A Right.

* * * *

[881] Q Okay. So from 1969 to 1973, if it said on the documents that it was going to a warehouse, you stripped it at the pier?

A Right.

Q And then, the freight handlers put it onto the motor transport carrier or the warehouser's truck; and the warehouseman took it back to his warehouse and he could do whatever he wanted to do with it?

A Right.

Q All right. Then, came along Dublin, and the Dublin rules of 1973. And that changed the concept whereby now you allowed that manufacturer's label and shipper's load to go to the warehouse so long as it stayed in the warehouse for a period of 30 days?

A Right.

Q When you suspended the rules on containers on April 28, 1975,—you being the ILA—you referred back to the 1969-1973 [882] period where the cargo was stripped at the pier?

A Right.

Q And then, when you reinstated the rules on May 30, 1975, you then went back to where the goods were being stored in the warehouse for a 30-day period?

A Right.

Q So, during the period of the suspension, you went back and did the same type of work that you had done between 1969 and 1973?

A Right.

* * * *

Q (by Mr. Auten) Mr. Merritt, I refer you to General Counsel's Exhibit 4, which is the 1974 through 1977 collective bargaining agreement for Hampton Roads. And I refer you to the rules on containers incorporated therein, page 67 "H" where consolidated container load is defined. Is that the same definition, to your mind, that you have applied to consolidated container loads?

A Certainly.

Q From 1968 up to 1974?

Now,——

JUDGE WAGMAN: He didn't say a word. He's just shaking his head. The reporter—— If you gaze out in space and [883] shake your head, the recording machine doesn't pick that up.

THE WITNESS: Yes. Certainly.

Q (By Mr. Auten) A consolidated container load?

A Right.

* * * *

[884] Q All right. Would you consider that when he simply took it from the box and put it in his trailer without adding to or subtracting from it, that he had made a consolidated load?

A I would not say so, no.

* * * *

[888] A Not with what they were charged under, no. Not in all cases, because—— Well, if I may——

Q In other words, they are not all in there, that's what you are telling me?

A Right.

Q Well, you are familiar with the operation of the warehousing companies in this area, D.D. Jones and Associated?

A Yes, I am.

* * * *

JOINT EXHIBIT #1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

5-CC-791

CA-75-441-N

WILLIAM C. HUMPHREY, ETC., PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL-CIO, ET AL.,

and

HAMPTON ROADS SHIPPING ASSOCIATION, RESPONDENTS

Norfolk, Virginia

September 17, 1975

Before: HONORABLE ROBERT R. MERHIGE, JR.,
United States District Judge

Appearances:

M. T. BOHANNON, JR., ESQUIRE
BRUCE D. ROSENSTEIN, ESQUIRE

For the Petitioner

SIDNEY H. KELSEY, ESQUIRE
THOMAS W. GLEASON, ESQUIRE
HERZL S. EISENSTADT, ESQUIRE

For Respondent Longshoremen's Associations

BRADEN VANDEVENTER, ESQUIRE
C. P. LAMBOS, ESQUIRE

For Respondent Shipping Association

* * * *

[52] JACK W. MACE

was called as a witness on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[55] BY MR. ROSENSTEIN:

Q Would you tell the first date that the containers appeared in the Hampton Roads port area?

A A few containers started moving through Hampton Roads approximately 1965, just a few.

Q Have they continued to be present in the Hampton Roads area to the present date?

A They have.

Q Now, will you define for me what a full shipper's load is?

A A full shipper's load would be a container load of goods belonging to a single beneficial owner.

* * * *

[56] In 1968, the first contract between the Hampton Roads Maritime Association was negotiated; is that correct?

A That is correct.

Q All right.

With respect to full shipper's loads in 1968, did they go through not being stripped at the pier by Deep Sea I.L.A. labor when destined to a beneficial owner more than 50 miles from the port area?

A That is correct.

Q I request that you look at the 1968 agreement and refer to page 64.

Is it not a fact that in the rules on containers, it was negotiated only with respect to L.T.L. loads and consolidated container loads?

A That is correct.

Q On page 65, it states that these provisions relate solely to containers meeting each and all of the following

criteria: Number one refers to L.T.L. loads and consolidated container loads, correct?

A Correct.

Q What is number two? What does that mean?

A Such containers which come from or go to any person, including consolidator, distributor, et cetera, and who is not the beneficial owner of the cargo. Such containers [57] would be stripped or stuffed by the I.L.A. labor.

Q Now, neither one or two refer to a full shipper's load; is that correct?

A That is correct.

Q And if you will refer to page 68, subparagraph 8, it talks, does it not, only of LT.L. cargo or consolidated full container loads?

A That is correct.

Q There is no mention in the rules of containers in the '68 to '71 contract with respect to the stripping of full shipper's loads?

A No.

Q Now, would you refer to the 1971 contract?

THE COURT: PX-2?

MR. ROSENSTEIN: I am sorry?

THE COURT: PX-2.

MR. ROSENSTEIN: Yes, it is, your honor, on page 66.

And were the rules on containers very similar to the 1968 agreement?

THE WITNESS: They were very similar in many respects.

BY MR. ROSENSTEIN:

Q Did they relate to L.T.L. and consolidated full container loads?

A That is correct.

[58] Q Nothing on the rules of containers in the '74 agreement with respect to the stripping of full shipper's loads?

A That is correct.

Q If you would refer to petitioner's 3, the October '74 agreement.

On page '67 of that agreement, it talks in terms of a consolidated container load. Now, the previous contract talked about L.T.L. and L.C.L. loads. Is a consolidated container load also considered as an L.T.L. or an L.C.L. load?

A Yes, if it had cargo belonging to more than one owner.

Q And the rules on containers speak in terms of consolidated container loads: Could they not?

A Yes.

Q Those are the type of loads which the deep sea I.L.A. labor desired to be stripped at the pier?

A That is correct.

* * * *

[59] If you would refer back to petitioner's 3, the most recent contract, respondent I.L.A. and CONASA met in Dublin, Ireland, as you specifically stated, in January of 1973. Did they at that time negotiate a 30-day warehousing exception to the rules on containers?

A Yes, on import cargo.

Q Would you explain to the Court what the 30-day warehouse clause provided for?

A It was negotiated because, historically, [60] certain types of cargo would be warehoused upon entry into the country before being sent to its final destination. I.L.A., recognizing that, negotiated a 30-day warehouse rule providing that cargo would be placed in a bona fide public warehouse, and provided cargo remained there for 30 days—at least 30 days—and that warehousing charges covering that were paid.

Q Was that embodied in the contract as rule 2-B-4?

A Yes.

Q Did there come a time when the present container rules found in the October 1974 contract were negotiated?

A Yes.

Q And did that occur in June of 1974?

A Yes.

* * * *

[67] Q Now, I direct your attention to April 28, 1975. I ask you whether or not the rules on containers as contained in the October '74 agreement were suspended?

A That is correct. They were.

Q And was that done pursuant to a 30-day notice under rule 8 of the contract?

A It was.

Q And were the rules thereafter reinstated on May 30, 1975?

A They were.

Q As a part of the suspension of the rules, were the warehousing rules contained in 2-B-4 of the contract suspended?

A They were.

Q Mr. Mace, as a result of the cancellation of the rules on containers, would you describe for the Court what effect that had on the employer members of the Hampton Roads Shipping Association?

A cancellation of the rules on April 28th, the I.L.A., at that time, upon the cancellation of the rules did permit certain containers to move through the port area, such as manufacturers labelled cargo. It caused in one particular [68] case some containers to be diverted to, or threatened diversion to outside state area. Other containers were held in storage until a resolution was reached between management and labor on renegotiated contracts.

Q Was there a lot of cargo out in the open on the docks as a result of cargo being stripped at the pier?

A I would have no knowledge of—direct knowledge of that.

Q All right.

Nothing further.

THE COURT: Any cross-examination?

CROSS-EXAMINATION

BY MR. LAMBOS:

Q Mr. Mace, it is true, is it not, that before January 1973, there was no warehousing exception in the port of Hampton Roads?

A That is correct.

Q In other words, if a full shipper's load was to be warehoused in the port of Hampton Roads, is it not true that the I.L.A. would strip that full shipper's container at the pier and it would then be trucked to the warehouse?

A That is correct.

Q Is it also not true that beginning with the 1968 collective bargaining agreement between Hampton Roads Association and the I.L.A., any container, any container which [69] was to be stuffed or stripped within the 50-mile radius of the port of Hampton Roads by other than either the I.L.A. or the employees of the shipper, was deemed mutually a violation of the contract?

A That is correct.

Q Is it therefore not true that the collective bargaining agreement for the period October 1, 1968, to September 30, 1971, prescribed the delivery by a carrier of a full shipper's load to a consolidator or trucker who was to strip the container?

A Yes.

Q Now, is it also not true that you were the secretary of the joint container committee in this port from 1969 down to the present time?

A That is correct.

Q And is it also not true that there have been many occasions—in 1969, 1970, in 1971, in 1972, in 1973, '74, and '75—in which your committee mutually determined that where a full shipper's load had been stripped by the employees of other than the shipper, that the carrier was in violation of your rules?

A That is true.

Q No further questions.

THE COURT: Any further examination?

MR. GLEASON: One or two questions, your honor.

[70] CROSS-EXAMINATION

BY MR. GLEASON:

Q Mr. Mace, just to clear up a point on the notification that the I.L.A. gave with the cancellation of the rules. Isn't it a fact that when the cancellation was

given that manufacturers labor—or shipper's loads, as we call them—were still exempt and were able to go through to the consignee?

A That is true, they were exempt; they could proceed.

* * * *

[71] Q Mr. Lambos asked you a qustion concerning the stripping of full shipper's loads at the pier area. Now, between 1968 and 1973, prior to rule 2-B-4, the 30-day warehousing clause, wasn't it a fact that loads which were destined for a public warehouse were stripped at the pier by deep sea I.L.A. labor?

A Yes.

Q But if that load, full shipper's load, was not destined for a public warehouse, but was destined to a beneficial owner more than 50 miles from the port area, wasn't it a fact that load was not stripped at the pier by deep sea I.L.A. labor?

A That is also correct.

* * * *

RECROSS EXAMINATION

[72] Q Turning to Mr. Rosenstein's last question, I would say that we all agree if a shipper's load was destined to go from Norfolk to any point outside the 50-mile area, and in fact, was transported out, that was not handled by I.L.A. labor; was it?

A That is correct.

Q However, if that same container was shortcutted and went to a deconsolidation station of any kind, whether it be a consolidator or trucker, and the shipper's contents taken out and stripped there before they were taken to that area 50 miles from Norfolk, that was always deemed a violation in this port; is that not true?

A That was also a violation. My question pertained to a beneficial owner's facilities outside. But deconsolidator, yes.

Q And a trucking station?

A And a trucking station would be a violation.

MR. ROSENSTEIN: Could I clarify one thing?

Mr. Mace, that is, is it not, the case that the I.L.A. makes specifically that if a container, if the seal is broken within the 50-mile radius by a motor transport carrier,

that [73] that is a violation of the rules on containers as embodied in your contract when the container is destined for a point more than 50 miles outside the port area?

THE WITNESS: If the cargo is removed from the container by a trucker, then that is a violation.

MR. ROSENSTEIN: All right.

That is exactly the reason, specifically, in this case that the joint container committee was called together and that it was decided jointly that a violation of the container rules had been made out?

THE WITNESS: That is correct.

MR. ROSENSTEIN: Thank you.

THE COURT: You say that from 1960, there were many occasions that the committee held under certain circumstances that stripping was a violation. What action was taken, if any?

THE WITNESS: The ocean carrier was notified of the decision of the joint container committee and fined.

THE COURT: The fine was imposed?

THE WITNESS: Yes.

* * * *

[74] CLETUS E. HOUFF

was called as a witness on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[75] Q Now, do you utilize steamship lines to pick up cargo?

A Yes.

Q Have you been engaged in the picking up of cargo in containers?

A Yes.

Q And when did you first start this practice?

A When containers came into being. I would [76] estimate, 1966.

Q Now, as one of the lines which you utilize, was U. S. Lines a shipper?

A Yes.

Q Now, will you explain to the Court how Houff Transfer is notified if they have been selected as the motor transport carrier?

A They are notified by agents or brokers located within the city where the containers are debarked or offered back for transportation.

Q Do you then proceed to the pier area?

A They, in turn, notify you and arrange for you to receive delivery papers, bills of lading and so forth, which you carry to the pier for authorization to pick up the containers.

Q What do you do when you go down to the dockside facility, to the pier?

A These papers are given to the line which had the container, and at that point interchange papers are completed covering each individual container which we receive.

Q Now, Mr. Houff, are you familiar with the term "full shipper's load"?

A Yes.

Q Would you explain your understanding of a full shipper's load?

[77] A It is a container that is loaded by a shipper, loaded to its full capacity, destined to one consignee or owner in this country.

Q Now, I direct you attention to February 19th of 1974, and ask you whether you had occasion to pick up any containers on that date?

A We did.

Q Would you explain where they were picked up?

A We picked up two containers from U. S. Lines in Baltimore, Maryland, destined to the Union Carbide Corporation in West Virginia.

Q Is that a point more than 50 miles from the port area of Baltimore, Maryland?

A It is in the commercial area of Charleston, West Virginia, and it is approximately 400 miles from Baltimore.

Q Did you at that time have an equipment interchange agreement with U. S. Lines?

A We did.

Q Would you explain to the court what an equipment interchange agreement is?

A It is an agreement that spells out terms and conditions under which you agree to interchange equipment, the per diem charge for that equipment, and it varies from different types of equipment. This is what they call a master [78] agreement and puts you on the approved list to do business with each carrier with which you have negotiated this agreement.

Q Now, getting back to the two containers in question. What size containers were they?

A They were 20-foot containers.

Q All right.

What did you do with those 20-foot containers after you picked them up?

A We took them to our Baltimore terminal.

Q Now, were those 20-foot containers picked up intact?

A They were.

Q Deep Sea I.L.A. labor had not stripped those containers at the pier: is that correct?

A That is correct.

Q What did you do with them when you got them to your facility in Baltimore ?

A We unloaded the containers onto Houff trailers for over-the-road transportation.

* * * *

[81] THE COURT: But in February of '74, if you picked up a container that was violative of the laws, that is, so far as being able to transport it, did you strip it there at the pier?

THE WITNESS: Never.

THE COURT: Well, did you move it over any portion of the highways of Virginia to your terminal?

MR. ROSENSTEIN: Could I clarify? I think I can help.

THE COURT: Well, you would like him to answer, but you may clarify anything.

THE WITNESS: We may have moved some from piers here in Norfolk to our terminal, which would be, the streets of Norfolk, roughly three blocks.

THE COURT: Well, was it your understanding, however, that that was violative of the laws of Virginia?

THE WITNESS: If the laws of Virginia apply to Norfolk streets, it was.

THE COURT: I see.

All right. Go ahead.

BY MR. ROSENSTEIN:

Q When you got a container back to your facility here in Norfolk, what did you do to determine—how did you determine whether it met the Virginia State Laws?

A We pulled across the scales and weighed it and [82] measured it.

Q Okay.

So after you weighed it, did you then make the determination based on the weight distribution of the cargo?

A Yes.

Q If you found that the weight distribution was in violation of the law, what did you do?

A We backed it onto the dock and transferred it to a Houff trailer.

Q Now, in addition, to meet Virginia state regulations, what are some of the other reasons that a motor transport carrier would strip a 20-foot container and consolidate it on a 45-foot container?

A Safety is the second reason. Particularly, going into the state of West Virginia. If you ever have travelled U. S. Highway 60, thye have real sharp curves on the mountain roads that date back 40 years ago with no improvement. I wouldn't say no—may have been widened a little, but stil have the same surface they had 40 years ago.

These containers loaded to the roof with that much weight—and I say that much weight; we are talking in

round figures of 40,000 pounds per container—that makes it a real hazard, particularly in wet weather, to move such equipment over the road.

* * * *

[88] Was your equipment interchange agreement cancelled?

A Yes.

Q Was that in July of 1974?

A Yes.

Q All right.

Referring to petitioner's 18, the February 6, 1975, letter. Were you selected as the motor transport carrier to pick up containers that had been shipped on U. S. Lines?

A Yes.

Q Did you attempt to then pick up that cargo at the pier?

A No, because the broker wouldn't release the paper to us.

Q Why wouldn't the broker release the paper to you?

A Because U. S. Lines said we couldn't—didn't have an interchange agreement with them.

Q And that shipment was to be picked up where?

A At the port in Norfolk.

Q Here in the Norfolk area?

A Here in the Norfolk area.

* * * *

[89] Q Have you been been selected in the Norfolk area by a broker to specifically pick up cargo which had been carried on U. S. Lines?

A Yes.

Q This was between July of 1974, after the [90] cancellation of the interchange agreement and the present date?

A Yes.

Q Okay.

Can you be more specific as to just the Norfolk area? How many times you were denied the right to pick up that equipment?

A I would estimate 30 to 40 times.

Q And in terms of monetary loss, what would you estimate this has cost Houff Transfer?

A Just in Norfolk?

Q Yes.

A Somewhere between $15,000 to $20,000.

Q Now, directing your attention back to 1965 and 1966. You state in your testimony that to the best of your recollection, containers came into the Norfolk area about that time; is that correct?

A Yes.

Q All right.

With respect to full shipper's loads, such as was defined in the correspondence, what did Houff Transfer do when they picked up those type of loads? Starting in 1965 and 1966.

A On a small container, we transfer them to Houff trailers.

Q So was the procedure in 1965 the same as you describe in your testimony with relation to the two containers [91] that you picked up in Baltimore?

A Yes.

Q In 1966, did Houff do the same thing with respect to full shipper's loads?

A Yes.

Q In 1967, did they do the same thing?

A Yes.

Q In 1968, did Houff do the same thing of picking up containers which were destined to a beneficial owner more than 50 miles from the port area and they were going to go to the beneficial owner? Did Houff do the same exact thing as you described in your testimony?

A Yes.

Q In 1969, did they do the same thing?

A Yes.

Q 1970?

A Yes.

Q 1971?

A Yes.

Q And each suceeding year through the present date, have they done the same thing?

A Yes.

Q All right.

Going back to 1965 and 1966. Was Houff Transfer ever fined or was Houff Transfer ever asked to reimburse a fine of [92] any of the shipper's as a result of doing the same activity that they have done since 1966 to the present date?

A No.

* * * *

CROSS EXAMINATION

[94] Q Turning to your employees, are your employees members of any labor organization?

A No.

Q Has the I.L.A. ever sought to organize your employees?

A No.

Q Has the I.L.A. ever demanded of you that you turn over your employees to them and make them members of the [95] I.L.A.?

A No.

Q Has the Council of North Atlantic Shipping Associations or the Hampton Roads Shipping Association asked that you become a member of that organization?

A No.

Q Have you had any relations with any of the I.L.A. leadership in the port of Hampton Roads?

A No.

Q Have they ever made any demands on you?

A No.

* * * *

CROSS EXAMINATION

Q Now, with reference to the interchange agreement, what exactly is this interchange agreement?

A It is a standard interchange agreement that is patterned after the American Trucking Association as to the [96] standard interchange agreement between motor carriers.

Q Well, does it say anything about the cargo? Where it is going, destination, anything like that?

A Does it say anything about the cargo?

Nothing more than once we sign the agreement to take possession, that we are responsible.

Q Isn't it a fact it only applies to equipment, the condition that you receive the equipment in, and when you return it to the steamship company as to damages to the equipment?

A Generally, I would say that is true.

* * * *

[99] Q Did you ever talk to anyone at U.S. Lines and tell them you were stripping these containers at your facility?

A No.

Q So basically U.S. Lines had no knowledge?

A It was none of their concern what Houff did with the containers once they signed the papers and pulled them away from the docks. It was 100 percent the responsibility of Houff if he got involved in an accident; as soon as it got off the pier, it is Houff's responsibility and I did discuss that with U.S. Lines and brought up that very subject with them. We were talking about Baltimore. I said, "if we run this truck, this container, in Chesapeake Bay you could say that is your baby," and they agreed that is right.

I said, "well, once I sign for it, it is mine. What happens from then on, I am responsible."

Q You are responsible for the delivery of the cargo?

A That is right, and responsible for delivery of the cargo.

Q In most cases on a solicitation of business, did you solicit U.S. Lines or did they solicit you to do this type of work in the delivery of the cargo?

[100] A We solicited U.S. Lines, but the biggest solicitation comes from the consignees who are the receivers of this freight. They are people who specify as to how the containers are to move and how they want it moved.

Q They told you they wanted these containers stripped and put in your truck and taken out of the containers?

A Said whichever was most feasible for us, that was the way they wanted it handled.

Q Isn't it a fact you have done this on your own, really?
A No.
Q You were directed by the shipper to do this?
A That is right.
Q In all cases?
A Not in all cases.
Q Well, how often?
A I would say, in a majority of cases.

* * * *

[101] EDWARD G. BOCHERT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[102] Q Does associated have a contractual relationship with the International Longshoremen's Association?
A No, sir.
Q Now, do the majority of your interstate shipments involve long or short hauls?
A In Associated's case, long hauls.
[103] Q What is average distanct per shipment?
A In our case, 450 miles average haul.
Q Could you speak louder.
A Four hundred and fifty-two miles is our average haul from the Virginia Beach terminal.
Q What are distances of the Associated terminal from the nearby port area?
A Well, Associated Virginia Beach would be approximately 78 miles from Maritime terminal located in Norfolk. About the same distance from Hampert's Point's docks located in Norfolk. Eighty-nine miles from the Portsmouth marine terminals in Portsmouth and 20 to 25 from the C&O piers in Newport News, Virginia.

Q Now will you describe the procedures that you utilize after you have been delegated as the transport carrier to pick up equipment at the pier area?
A We obtain from either a broker within the city, or within the Hampton Roads area, or from out of state, a driver reordered bill of lading. This bill of lading and delivery order, we—it indicates to us that we have been specified as motor carrier to transport these particular goods.

* * * *

[104] Upon obtaining that information from the pier office or the steamship line involved, if we are instructed the goods are ready for pickup, we then dispatch a local driver with one of our local tractors to the pier area with the delivery order and he, in turn, reports to steamship lines office and says, I am such and such with Associated. I am here to pick this cargo up.

He is then instructed by people there of the proximity of where the containers in this case would be on the premises, and, in turn, he takes off and finds the container. Upon doing that, he takes it through steamship lines' check out line where the container is inspected for DOT and ICC compliance, that is the tires are checked. Once this is accomplished, he is then given a pass to exit premises of terminal to get out by presenting the pass to the guard at the gate. The guard knows he is there to pick up this piece of equipment.

Q Is the inspection process that you described under the auspices of an equipment interchange agreement?
A Yes, it is.
Q And who is the equipment interchange agreement between?
A Between Associated Transport and the ship line.
[105] MR. ROSENSTEIN: I am showing the witness a straight form bill of lading and the equipment interchange agreement which has been spoken of during this proceeding.

I refer you to the bill of lading and ask you whether or not that is a typical type of bill of lading that a motor transport carrier would utilize upon going to the pier area?

THE WITNESS: Yes, it is.

BY MR. ROSENSTEIN:

Q And I direct your attention to Section 2(a) on the other side.

I ask you whether there is any restriction in that section which precludes the motor transport carrier on the mode of his transportation of the equipment and the cargo therein?

A No, sir. It strictly reads no carrier is bound to transport said property by any particular schedule, train, vehicle or vessel, other than reasonable dispatch.

MR. ROSENSTEIN: I move to introduce, Your Honor.

* * * *

[108] Q Directing your attention to September 24, 1974, I ask you if you picked up any containers at the pier area?

A Yes, I did.

Q Would you tell me where you picked up containers?

A I picked up September 24th, at Norfolk International Terminal, Maritime Terminal, eight U.S. Lines' containers.

Q Now of the classification that you just described, L.C.L., L.T.L., consolidated container loads and full shipper's loads, what type of loads were contained within those eight containers?

A They were all full shipper's loads.

Q When you picked up those full shipper's loads did you pick up the container intact?

A Yes, I did.

Q The contents of the container were not stripped at the pier?

A No.

Q All right. Tell me what you did from the point [109] that you picked up those containers at the pier area?

A Well, they were all brought back to the terminal at Virginia Beach. Five of these containers were destined to one particular consignee in North Carolina. At Associated we had our own empty equipment on our yard.

Of those five, three were of 20-foot size. All right. Upon reviewing the bills of lading and whatever, I just determined that we—it was feasible for us to unload two 20-foot containers, they were to my knowledge cartons of velvet, and combine the two 20-foot containers into one of our 45-foot trailers.

The other 20-footer was also stripped and put into one of our 40-foot trailers whereas we added our own freight to it headed in same direction as the shipment in nose of the trailer of the container. There was some 40-foot containers that we determined the same thing, same type of material that I unloaded two 40-foot U.S. Lines' containers and put them into one of our trailers.

And to me and my company, this was a savings of many dollars. We are talking about eight pieces of equipment, and I put these loads into five of Associated's equipment I had available on the yard not doing anything but sitting around. We saved many dollars in line haul, diesel fuel, just the economics to it was there. I mean why take on this rented equipment when I had my own sitting around?

[110] Q Could you describe, or do you recall, any other reasons that you may determine?

A Yes. I had one in particular that was as we described overloaded. That is the axle weights did not conform to Virginia highways but Carolina highways, the axle were over gross as we should expect of them. Now the allowable poundage, say, would be 33,000 and one of them had like 37,000 pounds on it; they strip for that reason. We distributed the load within the trailer to conform to DOTICC and State Highway Rule and Regulations.

Q What are physical conditions of containers that you picked up from U.S. Lines at the pier yard?

A Well, to my knowledge and my opinion, steamship container tires are very poor quality. For whatever reason the bogeys or chassis, as they call them, sit dormant at the piers for these containers coming in from overseas, and of course, they are out in weather and dry rot and whatever have you and lights, as I stated we do go through

check out lines to determine this, but there again this is a costly item to us when we have a man sitting down there doing nothing.

But my experience with U.S. Lines—and firsthand I can say we pop more of their tires for some reason or another, and of course, this is another expence to Associated because containers are our responsibility while in our possession and Associated Transport has lost many a tire on the U.S. Lines.

[111] Q Now is there anything or any restrictions in the bill of lading or delivery order which prohibits the rearranging or stripping of containers?

A No, sir.

Q Is there any restrictions in the equipment interchange agreement between steamship line and motor transport carrier that prevents rearranging or stripping of containers?

A No.

Q In the case of the eight containers that you have described did the consignee beneficial owner require you not to strip containers?

A No, sir.

Q Is there any way in which a consignee beneficial owner could request a container not to be stripped?

A Yes.

If a consignee ordered exclusive use of vehicles requested, that would tell us, of course, that this container would appear at his premises with the goods intact and we would not, of course, be permitted to strip it; and, in turn, the owner or the buyer, whoever receives the goods, does pay a premium rate for these services.

Q Did any of the eight containers which you have described have on the delivery order or bill of lading exclusive use of equipment requested?

[112] A No, sir.

Q Directing your attention to October 5, 1974, tell me if anything unusual happened on that day?

A Yes. That was a Saturday. I received a call from a Lowell Willis, who is my supervisor with the weekend duty. Mr. Willis called me to advise me two gentlemen had identified themselves as being from U.S. Lines that

appeared on our yard early that morning, 7:00 or 7:30. I asked Mr. Willis did he authorize the men on my yard, and he said he had not.

As I said, he stated to me he was on a telephone call with our people in central dispatching, Burlington, North Carolina, and was not aware that they were on the yard until they came up on the dock yard and requested that they would like to inspect three U.S. Lines' containers that were backed into my platform. Well, Mr. Willis said there they were within eyesight—apparently they loaded them. After talking to Mr. Willis, I proceeded to the terminal. Upon arriving there, I went in my office and I called Mr. Queen.

Mr. Queen's title—I don't know what his title is with U.S. Lines but he is the equipment representative or something, whatever.

I asked Mr. Queen what were two people with U.S. Lines doing on my yard—inspecting my yard for the containers that were on the yard also. He stated he was one of the gentlemen [113] and a Mr. Merrit with I.L.A. was another one. And that he was just checking on his trailers down there on my yard. I asked Mr. Queen did he know he was trespassing on my property.

He came back to me with the comment that if you strip that container at your platform it will cost you $1,000. I told Mr. Queen, I had no intention of stripping containers; which whether or not I did or not was unimportant. But Mr. Queen went on to tell me he was sorry the way things were, he was in the middle, he didn't want to argue with me and so ended our conversation.

MR. ROSENSTEIN: Your Honor, I am going to show the witness some correspondence, letters which review the violations, as we did in the previous case.

BY MR. ROSENSTEIN:

Q Directing your attention to a letter dated October 11th, Petitioner Exhibit 21, can you identify that?

A Yes, I can.

Q Very briefly, what is it?

A It is a letter from F. W. Babb, who is port manager with U.S. Lines, advising Associated Transport Virginia

Beach, the U.S. Lines had been advised by I.L.A. that the containers listed on the second sheet were stripped at my facility in Virginia Beach.

Q All right. Now, in sequence, I direct your attention to October 31, 1974, and ask you if you attended a [114] meeting at the offices of the Hampton Roads Shipping Association?

A Yes, I did.

Q Who was present to the best of your recollection at that meeting?

A Well, of course, Mr. Billups with I.L.A., Mr. Merrit was there, Mr. Mace, Mr. Babb, myself, and Mr. Romeo, a salesman with Associated Transport.

Q What was discussed at that meeting with relationship to Associated Transport?

A Well, Mr. Billups presented his case to Mr. Mace and other gentlemen, that they had evidence we had stripped these eight containers on my yard, and in so doing, he stated times and dates, as I recall them maybe two or three times a day when my yard was monitored, these containers monitored from the time they leave the pier. And Mr. Billups concluded these containers never did leave the premises of Associated Transport and so they were stripped on my terminal, right at my terminal.

I was asked to speak up on Associated Transport's behalf. To bring with me any type of record or dispatch records that I could show proving I had actually run these containers with the cargo in them over-the-road to destination. My only statement that I could make was that I had to support the June 7th letter from the Tidewater Motor Carriers to Hampton Roads [115] Shipping Association.

Q I am showing you what had been introduced into evidence as Petitioner Exhibit 7. I ask you if that is the June 7th letter?

A Yes.

Q And that is a letter from the motor transport carrier to Hampton Roads Shipping Association?

A Yes, it is.

Q And Associated is a member of Tidewater Motor Transport Carrier?

A That is correct.

Q Now if you would refer to the letter dated November 8, 1974.

I ask you if you can identify that letter?

A Yes, I can.

Q Mr. Babb again writing to Mr. Elder with U.S. Lines in New York "whereas the Hampton Roads U.S. Lines has been levied a fine of $8,000, now looking for you to replenish the $8,000 pay," this $8,000 they had to pay the I.L.A.

I direct your attention to January 3, 1975 letter and ask you if you can identify that?

A Yes, I contact, this is from Mr. Babb to Associated Transport at Virginia Beach advising you that he had not heard any response to the first letter for the $8,000 fine that was imposed by the I.L.A. on U.S. Lines and looking [116] for Associated to pay this $8,000 fine.

Q All right.

I direct your attention to the February 14, 1975, letter and ask you to identify that?

A Yes. This was the final letter from Babb to Associated Transport at Virginia Beach in consideration of not receiving any reply to our letter of February 5, 1975, "under the same subject we must discontinue interchange of equipment with you until the cite involved is settled. Signed, F. W. Babb, Ports Manager."

* * * *

[117] This was on a load going to North Carolina, a full container load so, in turn, I called the broker that issued it to me. And I instructed him I did not have an interchange agreement with U.S. Lines any more. They refused to let me [118] have the containers. He would have to get another carrier that had an agreement to move his freight.

Q Is it U.S. Lines that selects Associated to be the motor transport carrier, or is it a shipper or a broker that does so?

A It is not U.S. Lines to my knowledge. It is the shipper or a broker.

Q Directing your attention to February 28, 1975, I ask you whether you had any unusual event occurring on that date?

A Yes. Mr. Bryant, who is the assistant manager for Associated Transport in Virginia Beach received a call from J. P. Stevens in New York City requesting us to pick up two U.S. Lines' empty pieces of equipment here to take to North Carolina, one of the plants in North Carolina, to be loaded there by J. P. Stevens for export for Norfolk.

Mr. Bryant took the call. He took the booking number.

He called Mr. Edwards down with U.S. Lines and asked Mr. Edwards, "is this a good booking number?"

Mr. Edwards said, "I will call you back. I have to call New York."

Mr. Edwards probably called U.S. Lines in New York. And the outcome was that we did not haul these containers. We got a call back grom Mr. Quigley, I believe, and said, "forget it,—that after Mr. Edwards had called Mr. Bryant, excuse me, and [119] said, "you don't have a contract with us any more," and so Mr. Bryant, in turn, had to call Mr. Quigley with J. P. Stevens and inform him we could not be the carrier.

Q Consequent to February 14, 1975, your equipment interchange agreement has been cancelled; is that correct?

A Yes.

* * * *

[121] Q Is one of the reasons you mention the stripping of containers that your facility—you mention per diem rates—would you elaborate on what you mean by a per diem rate?

A Yes, this is the charge that we pay the steamship line for the rental fee, I should call it, while this container is in our possession. Of course, I stated to you earlier that our average length of haul being 450 miles, we are always in a hurry to turn these pieces of equipment around. Get it to where it is going and turn it back in.

In our lenght of haul we—Associated is averaging $80 per container per diem charges that we handle in our

system. In other words, I pick up a container going from here to Michigan, say. I have a load on that container going to that place, but when it gets to that place, they don't have a load for Norfolk. They have a load for West Virginia, and they send the container to West Virginia. West Virginia does not have a load for Norfolk. They send it to Baltimore. This type thing.

The days mount up; the per diem charges, of course, mount up. And like I said, the charges incurred, I think, are excessively high; for one, the cost to our company per container is $80, and I should go on record that we are very strict with our containers, and we don't ignore them. We [122] could turn them around as fast as possible.

When you talk about a company as big as we are, the long haul type carrier, it is an added expense, in other words. You only generate so much revenue from the load, you have to pay the driver and fuel. These charges are excessive over and above your normal everyday charges, and it is hard for a common carrier, such as Associated, to make any type of marginal profit off a container load of freight because of the charges.

Q When you talk about a shipper, are you referring to the container being leased from U.S. Lines?

A Yes.

Q And, therefore, you would be paying those per diem charges to U.S. Lines?

A That is correct.

Q In the eight containers that you discussed today, you had to pay a per diem charge for each of those containers?

A That is correct.

Q And the quicker, therefore, that you turn over the containers and get it back to U.S. Lines the lower your expenses on that particular container?

A That is correct. Right.

THE COURT: Nothing else.

CROSS-EXAMINATION

[123] BY MR. LAMBOS:

Q Mr. Bochert, picking up—U.S. Lines' containers is not the only business of Associated Transport in this area?

A No, sir.

Q In fact, you do a lot of domestic work, that is, picking up non-foreign cargo?

A Correct.

Q And the 11 checkers that you have down at the facility in Virginia Beach do a lot of that consultation work; don't they?

A Correct.

Q You told us the drivers were members of the Teamsters Union—are these 11 freight handlers members of any union?

A Teamsters also.

Q Has the I.L.A. ever sought to organize these 11 men?

A Not to my knowledge, I don't know.

Q Has the I.L.A. ever made a demand that you sign a contract to represent these 11 men?

A No.

Q Mr. Bochert, I would suppose that Associated also picks up cargo from so-called break-bulk or non-container shipments; do you not?

[124] A No.

Q You mean, you never had occasion to send a truck down to pick up cargo from—

A I missed that.

Q A break-bulk container type?

A No, I have not. That I know of—I will put it that way.

Q Do you know, of our own knowledge, whether other companies in the area pick up cargo of that type?

A You are saying a steamship line?

Q I would say, for example, a thin line ship might come in. They have some containers and also some cargo in pallets?

A Correct.

Q Has a trucker—excuse me—has a broker ever requested Associated Transport to pick up such cargo?

A Yes.

Q Hav you gone down to the pier with your own truck?

A Yes.

Q And the I.L.A. has actually loaded that cargo on your truck; has it not?

A Correct.

Q And to your knowledge that was the type of ships we had here in Hampton Roads for years and years and [125] years before container ships came?

A I can't speak for that, I will be honest with you.

Q You have no knowledge?

A That's right.

Q In the break-bulk activity the part, I take it, is performed by deep sea I.L.A. laborers who put the cargo into your truck?

A Yes.

Q I take it, too, if you were going to use one of your own containers because you didn't like the U.S. Lines' equipment, and you found it too decrepit and were popping tires on it all the time, that you could just as easily move one of your own containers down to the pier and have the I.L.A. deep sea labor move the cargo from the U.S. Lines' containers right into your own containers?

A Well, in that case, you are talking about added expense to a shipper or consignee. In other words, if I handle it, that is me. I generate so much revenue from the containers, which I spend all my money handling if I lose money. You are asking me to take my empty trailers down there let them load it—and these fat I.L.A. get paid—would be added expense to a shipper or consignee.

* * * *

[126] If I said to a consignee I want to take my empty trailers down there, instead of me handling it with my own labor I want to take it down to the pier and let the I.L.A. labor handle it. This consignee will say to me, "to heck with you that is a cost to me, you handle it because you are only getting X number of dollars for the containers anyway from me." I would get that, then the I.L.A. labor would be an excess handling charge so I

would not do that as a trucker. I would not encourage that because the consignee could divert from me to somebody else, another carrier.

* * * *

[128] Q And one of these others have been cancelled to your knowledge?

A That is correct.

Q Have you had any complaints from any of these others?

A No.

Q Have any of these others told you that you were not to strip their containers at your facility?

A No.

* * * *

CROSS EXAMINATION

Q Mr. Bochert, on your interchange agreements [129] where you haul containers for U.S. Lines, how do you get paid for the trucking; who pays you?

A It is so specified on the bill of lading who is responsible for charges, either ship collect, prepaid by such and such, this way.

Q Does in most cases U.S. Lines pay you; you bill U.S. Lines?

A Talking about per diem charges?

Q Talking about the revenue for hauling the containers?

A No, sir, they are not involved in that to my knowledge, the revenue. It is between the consignee, the shipper or a third party, possibly, other than U.S. Lines.

* * * *

[130] Q Did U.S. ever know you were stripping?

A I didn't hide it. To be honest, no.

Q Did you ever talk to them about stripping the containers because of the type of the equipment they were turning over to you?

A No, I don't believe so.

Q Basically wasn't it an agreement between really with you and U.S. Lines, they thought you were going to deliver that cargo intact in those containers to the ultimate consignee?

A Where does U.S. lines come in? After I sign the lease that cargo belongs to me.

Q But this was the intention; wasn't it?

A I could not say. I will be honest. If they expected me to do this, I do not know. I don't think they did because I don't think they are involved.

* * * *

[131] A. S. McNEILL

was called as a witness on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[136] We felt there is no control at all on the motor carrier, and this has always been defined by the Federal Maritime and Interstate Commerce Commission that once the container is turned over to a motor carrier at a pier facility any further jurisdiction is under the Interstate Commerce Commission. Federal Maritime nor the steamship line had any control over it.

* * * *

[137] Q I direct your attention to the 11/8/74 letter. I ask you if you can identify that?

A This is a letter from U.S. Lines addressed to Pilot Freight Carrier, also, advising them of the violation of the contract which they held with the I.L.A. And they advised them that through a committee of the Maritime Association that they were imposing a fine of $1,000 against Pilot Freight Carrier and asked for remittance of the same.

Q I direct your attention to the February 5, 1975 letter and ask you if you can identify that?

A A letter from U. S. Lines addressed to Thurston Motor Line, Inc., advising of a violation of a stripping cargo and also asking for a $1,000 reimbursement charge.

Q And was this container a full shipper's load which was picked up at the pier by Thurston Motor Line, brought back to its facility and stripped, placed on one of

[138] its own pieces of equipment, as it was destined to a point more than 50 miles down the port area?

A Yes.

Q I direct your attention to the February 14, 1975 document. I ask you if you can identify that?

A This is a letter from U. S. Lines, Inc., Mr. Wilson Babb, port manager to Pilot Freight Carrier advising them they must discontinue interchange of the equipment until the situation was resolved.

Q Now, did Thurston Motor Line also receive a similar letter cancelling their equipment interchange agreement?

A Well, the original letter stated that fact. I am not sure if they had an additional letter or not. They were no longer able to interchange the equipment to my knowledge.

Q Now, did Thurston and Pilot have an equipment interchange agreement similar to the one that Mr. Bochert decribed in his testimony?

A Yes, they did.

Q This was the type of agreement that was cancelled?

A Yes.

Q In the bill of lading is there any restriction whatsoever which precludes the motor transport carrier once he [139] takes possession of that equipment of rearranging or stripping?

A There is none.

Q Is there any restriction in the delivery order which would preclude the motor transport carrier from rearranging or stripping a full shipper's load?

A No.

Q Is there any restriction in the equipment interchange and agreement which precludes a motor transport carrier from shipping or rearranging the loads?

A No.

* * * *

[140] Q Was Tidewater Motor Truck Association a party to the agreement between the I.L.A. and H.R.S.A. in negotiating of the 30-day warehousing exception?

A No, they were not.

Q Was, however, a warehouse such as D.D. Jones specifically affected by the results of this negotiation?

A Very definitely.

Q Now, the 30-day warehousing clause was negotiated in 1973; is that correct?

A Yes.

[141] Q And remained in effect until April 28th of 1975?

A Right.

Q All Right.

How did the operation of D.D. Jones and other public warehouses change when the rules on containers were suspended on April 28, 1975?

A Well, during that time we had many inquiries from accounts which we were working with as to the implication of that move.

In some cases we had a diversion of traffic away from the area, away from the state of Virginia, which resulted in a loss of traffic and business which we would handle normally.

We also had a lot of inquiries about the additional cost which customers would inquire as a result of that. In one case one of the major shippers stated the cost would amount to approximately $400 additional per container if it happened to be stripped at the pier and then to the warehouse and to their own trailer and so forth.

Q Was there a period of delay now as a result?

A Yes. It would cause delays anywhere from, I will say five to eight days, and also would incur much additional pilferage and so forth to the goods.

Q What happened specifically with the goods once they were taken off the ship by deep sea I.L.A. labor during the suspension of the rules on containers?

[142] A Well, as I say, often the goods were diverted to other areas, but those that still moved within the area and to our facility we had to pick up with our own trailers from the the pier and move them to our warehouse.

Q When you picked up at the pier area was the goods already stripped by deep sea I.L.A. labor?

A In many cases it was. In others we would attempt to pick it up and it had not been stripped.

Q How would that cargo be handled specifically when the 30-day warehousing clause was in effect? What were the differences, specifically?

A Well, the difference was we could send a tractor only to the pier facility and hookup to a container and interchange it through the steamship facility and move it directly to the warehouse, in this area 30 to 40 minutes, whereas if it was stripped you would have to send your own equipment at added expense and possibly the shipper would incur as I say maybe three- to five- to eight-day delay in the movement of the cargo.

Q Who was allowed to strip the cargo after it had been picked up during the period when the 30-day warehousing clause was in effect?

A Well, the facility within the 50 miles could strip it if it was supposedly solid loads or shipper's loads or manufacturer labels.

[143] Q Would your employees, if the goods were to stay in a warehouse for 30 days, strip that type of cargo?

A Yes, we would.

Q Not stripped by I.L.A.?

A No, it was not.

Q Did there come a time when the rules on containers were then reinstated?

A Yes.

Q And when was that?

A Approximately 30 days later.

Q May 30, 1975?

A Yes.

Q And then did the operations go back to the way it was prior to April 28?

A Yes, it did.

Q All right.

Now, have you been able to determine what, if any, business D.D. Jones lost as a result of the suspension of the rules?

A It is really hard to determine exactly how much business you have lost, because a lot of it you would get

normally you never hear of because this word is passed through the brokers in the area and they will advise the shipper at the time they offer you freight of these restrictions so the shipper don't tender the cargo.

[144] In other cases, we have large movements from the warehouse because we get advance notice on what is destined to our facility and we know the shipments were diverted to areas outside the Virginia limits which cause you to lose the revenue and so forth, and also is added expense to the shipper in those particular cases.

Q Mr. McNeill, under the 30-day clause in warehousing operations in 1973, were your employees stripping those containers when they got to the warehouse?

A Yes.

Q This was the mode of operation that continued up until the suspension of all rules April 28, 1975?

A Yes, that is true.

Q Nothing further.

THE COURT: Any cross-examination, gentlemen?

CROSS-EXAMINATION

BY MR. LAMBOS:

Q Mr. McNeill, have you been active in your Tidewater Association for some years?

A Yes, I have.

Q And isn't it a fact since 1969, internally among the various officers and members of Tidewater the CONASA-I.L.A. rule on containers has been the subject of much discussion?

A Yes, they have been discussed.

[145] Q And isn't it also a fact that to the extent possible you have kept your members advised of the contents of the rules?

A The members have been advised and they discussed it, but I have always had the attitude they don't apply to motor carriers.

Q And I think the I.L.A. and CONASA would take the same position. But it is a question of knowledge, the rules on containers are fairly well known in the trucking industry; are they not?

A The rules pertaining to movements within the 50-miles area were more widely published and known and discussed than were those outside 50. Those only came to our knowledge since the meeting was called.

Q So if it was something within 50 miles, everyone pretty well knew that containers had to be stuffed or stripped by I.L.A. labor; was that not right?

A Only if the destination was within 50 miles.

Q Within 50?

A Right.

Q Now, if the destination of that container was outside the 50 miles all of your members felt that container would move freely—that container could move otuside the 50 miles freely?

A Well, it could if they so chose to do so but [146] also has the prerogative of transferring the cargo if they could to reduce expenses or for safety.

Q Isn't it true a container that comes to a trucker's yard and is stripped can't possibly or physically move outside the 50-mile limit?

A Well, there is no need for it to move outside until they so choose to move it by that method.

Q But the point is, that container never moves outside the 50-mile limit, that container is returned back to the steamship carrier after its contents are removed by the trucking company; is that not correct?

A In a few cases. I am not saying that carriers do not move containers. The dispatch by motor carrier almost daily occurred between his operation here and other outlying terminals and so forth. It might to be to his advantage to move a container to Richmond or Raleigh and return it if he can do it in two days. But he may have a load or his own equipment. He might have two containers he could load into one to reduce the expenses.

Q Has not D.D. Jones had experience with the rules of containers going back to 1969, and what they meant?

A Yes.

Q And hadn't D.D. Jones known as a matter of meeting between I.L.A. and Hampton Roads Shipping Association that where a container was to be stuffed or stripped by anyone [147] other than the shipper or

consignee's own employees within the 50-miles area, up to the Dublin Rules of January 1973, that work was to be performed by I.L.A. labor?

A We have been aware of the contingents of the steamship and I.L.A., but we never agreed they were binding upon us as warehouse facility or as a motor carrier.

Q I am only talking about knowledge and certainly it is not contingents that are binding upon you. Would you say however they were binding upon U. S. Lines?

A Well, I would say they were binding according to their agreement with the I.L.A. but not upon the—

Q And binding upon the I.L.A. as to permitting containers to move outside the 50-miles area as well; are they not?

A I don't think they legally can be bound by I.L.A. We have interpreted it to be under the jurisdiction of the I.C.C. once it leaves a shipper's origin and/or beginning point and not the I.L.A. or steamship industry or no other industry attached to it.

Q Have you people complained to the Interstate Commerce Commission with respect to the cancellation of these interchange agreements by various steamship carriers?

A Yes.

* * * *

[158] MYLES E. BILLUPS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[160] Now, Mr. Billups, I want to know what the traditional jurisdictions of longshoremen was in your time in the past 32 years on the dock before containerization of cargo came. First tell us, please, how longshoremen handle cargo, and what type of cargo it was that arrived at the docks, and by what means and how the dock gang —first, take the instance of loading the ship—I don't know that Judge Merhige has too much along this line and we want to tell him if you can. Can you tell him how this operation is as it comes to the ship?

A Well, the basic, as we call break-bulk and sometimes that confuses people when we say break-bulk.

Q What is that?

A Loading cargo piece by piece, it does not mean that we dump it all in the ship in that manner.

Q Is this by hand?

A That was considered the method that we used prior to containerization. We would take the cargo out of the ship via pallets, trays, some call it. We would put it on the dock. We had fork-lifts, et cetera, to move the cargo into [161] the piers. We unloaded the pallets piece by piece, separated it, sorted it, and made it ready for either shipment out via over the road truck or rail cars.

Q All right.

Now the pallets, at one time did the longshoremen load or discharge what was known in those day as conex boxes?

A Yes.

Q Tell the judge what conex boxes are?

A They were not owned by steamship lines back in the wartime years and later into the Korean war, et cetera. Conex boxes were military boxes that primarily housed some ammunition, some household goods, electronical equipment, that was not to be disposed by regular handling.

Q They were boxes—they were really cargo which had been boxed up, would that be a good description of it?

A Yes, but military conex boxes came primarily already loaded by the government where it came from.

Q Now when cargo came destined for the pier before containerization operation, whose job was it or who had the work jurisdiction of unloading, for instance, say trucks that would bring cargo and unloading trucks of ships' cargo?

A Well, when trucks came down to the piers, they would bring down loads of cargo from over-the-road, all kinds of over-the-road trucks. We would unload the cargo from the truck and place it on the pier for later to be shipped on a [162] ship. It would go, as we call it break-bulk, practically 100 percent up until say around 1965 or 1966, we started to get new containers to run through

the port. But we started to with the piece-by-piece and box-by-box method of handling—we used to have as many sometimes as five gangs of longshoremen at 22 men per gang. Those five gangs of men would average on a good ship with good handling equipment, might average 30 ton an hour which would mean the five gang total with a 110 men on the ship would average out about 150 ton an hour or as to going with the break-bulk method. Then containerization came in.

Q Do you have a small model here you could show the judge of a truck with two containers on it?

A Yes. That is what is considered a container. It has with it the piece of equipment that is pulling that tray is called a fifth wheel. We have some machines that we use on the pier that is called hustlers, but they primarily have the same function. The only thing with the hustler is that it has automatic equipment that lifts the container up so you don't have to be winding the wheel on the tractor.

Q There are two containers in the model there?

A That is a simulation of two 20-foot containers on one flat as we call it.

Q Either one of them can be lifted off or put on; is that correct?

[163] A Either one of them can he lifted off individually. We have a crane now down at N.I.T. that could take both of those containers off simultaneously with one lift.

Q All right.

These are metal containers, the 20-foot containers and 40-foot containers in the tray; is that correct?

A Yes.

Q These containers contain cargo if they are destined to go overseas which are brought to the piers either by truck or by rail car; is that correct, sir?

A Yes.

Q And then the work jurisdiction of the longshoremen is that they pick up these containers and they are placed aboard the ship; is that correct?

A Yes.

Q Well, then would you say that the container method now is an extension of the work jurisdiction which you formally did by hand with break-bulk except that the break-bulk is now put into a sealed container; is that correct?

A Well, the containers is a new method of loading and unloading ships and it has increased productivity more than 100 percent. Because as I outlined a few moments ago, whereby we had at sometimes five gangs on the ship averaging 30 tons an hour and an employer at that point in time thought he was doing good with 30 ton per gang of 22 men. We can now [164] with the container handling method, with a crane, one crane, and a 20-man gang load as high as 600 tons per hour, which more than doubles what five gangs were doing with the old method. So that caused us to lose men, whereby we had 110 men on a ship now we have a container ship with one gang of men on it, 20 containers. Whereby it used to take you almost a week to do 3,000 ton, now we can load 3,000 ton in about six to seven hours.

Q Now the containers were used for ships that were built to carry them, first I believe in New York City; is that right, around the early 1960's as you recall now?

A Yes.

Q Now, speaking of Hampton Roads. When were containers first beginning to come in as a part of your work in any number. Was—approximately what year if you recall?

A Well, as I outlined, containers started to move here in very small quantity around 1966 and 1967. There may have been one or two on the decks of general cargo ships in '65. When we were negotiating our contract prior to the 1967 contract and employers—the chairman of the employers' committee told us that because we were attempting to get guaranteed annual income imposed in our contract and we were—we thought that we would be ready to give a few men out of the gang in order to pick up this guaranteed annual income—and employers stated they didn't want to cut the gangs down [165] because we didn't have containers here and they would never see a full containers' ship dock in the port of Hampton Roads.

Q Now getting back to your own personal experience, did you serve on the negotiating team for the negotiating team of the local contract with the employers and if so, what was your earliest date or year that you can recall that you served in the negotiating item I.L.A. team?

A I served on every negotiating committee for the port of Hampton Roads since 1955.

Q Now, this is for negotiation of contract every third year or every fourth year whichever it happend to be, that is correct; is it not?

A Right.

Q When the containers came in, did the, as you mentioned, did the I.L.A. deem it necessary to have any particular rules concerning this or what were the issues involved that Mr. Lambos has told the court that we gradually get the container rules in the contract? What precipitated this?

A Well, it was a work preservation clause instituted in the New York contract. We had also traditionally and historically the port of Hampton Roads, along with Baltimore, Philadelphia and New York, Providence and Boston were also in a collective bargaining state. We negotiate with the New York Ship Association, primarily, but [166] the outcome of those negotiations also reflected all of the other ports from Boston or Searsport, Maine to Hampton Roads.

Q In other words, you had a national contract for your wages and your hours and certain conditions of work, but there were local rules which you locally negotiated; is that correct?

A Well, we had a national understanding prior to the formulation of the CONASA organization and the International Longshoremen's Association. Then it became a matter for the Atlantic contract that was the inception of the contract.

Q When did the container rules come in, under what contract did the container rules as we now have them in the contract come into existence?

A 1968.

Q 1968. The year in Hampton Roads?

A Yes.

Q Now the 50-mile container rule, which is the subject matter of this controversy here, was that or is that a national rule or is it just a local rule?

A Yes, that is the national contract.

* * * *

[168] Q Now the I.L.A. gets a royalty from which the employers agree to pay for boxes which are not stripped; is that correct, sir?

A Yes. Those boxes that move unrestricted right straight through the term fall without the longshoremen handling it beyond just lifting the boxes off the ship and placing it in the storage area for later to be picked up and carried through, we got $2 a ton for each one of those [169] containers.

Q The purpose of obtaining this was to repay—to repay, at least a loss of jobs, which the containerization resulted in; isn't that correct?

A And it goes beyond that.

All of your fringe benefits, our welfare, our pension, our vacations, our holidays, all—it all—it comes as a result of man-hour work by longshoremen. The contract reflects for each hour a longshoreman works there is a certain amount of money placed into the funds to provide for him a pension and to protect him when he becomes sick or his family and children become sick on the hospitalization policy. The containers has cut the man hours so drastically, because of the containers that are moving straight through—these 20-ton, 30-ton containers going right straight through that we used to handle all of the cargo.

Now everybody is saying, "Well, we have got to let these go through," so we have agreed to allow these to go through and we take the royalty. One of those dollars is going into a fund to protect the welfare and pension moneys that is to be lost as a result of deficient man hours, the man hours going down.

Q So this money then is really compensation for the loss on jobs?

A Jobs and man hours.

[170] Q Man hours that the containerization, the modern way of manufacturing cargo, has resulted in?

A Right.

Q Is that correct?

A That is correct.

Q I would like for you to explain to Judge Merhige how this committee operates that has been mentioned, I.L.A. fines the members that violates the rules. Actually it is the unit committee of the employers and employees that does the fining; isn't that correct?

A Well, the agreement was set up for flagrant violators of the principles that were outlined in the contract at that time the I.L.A. had waived its right to strip all containers and handle all of the cargo piece by piece. These containers that we had permitted to move to the beneficial owner outside of the 50-mile radius or inside the 50-mile radius, if he were the beneficial owner we would get the royalty money on. So we had to put a container inspector on to be sure, and he was checking the interchanges and the bill of ladings where these containers were destined to, and we just watch to see.

Q Give us an example that your inspector finds that a box is being stripped against the rules. Tell us what happens then?

A Well, the container inspector is notified. We [171] get a report on every container that moves through this port, through the shipper or agents. They send us a report of the containers that are moving. The container inspector checks the piers in the morning for containers moving out of the area. The employers cooperate and they notify the container inspectors that they are releasing some boxes to a certain trucker who—and these boxes are moving on a straight through bill of lading on a shipper's load bill of lading. And that is going outside a 50-mile radius.

Q What is shipper's load?

A A full container with one consignee or beneficial owner's cargo in the box.

Q All right.

A The container inspector is notified of the destination of these containers, that the container may be going to Kansas City, some of them may be going to South Carolina; but they are all destinations. He knows where the containers are supposed to be going.

And then he monitors, as we were talking about, he monitors the area. If Associates containers, if U.S. Lines

has released a container to Associates the container inspector may drive by Associates installation to see if the containers are gone; if they are gone, no problem. If he sees the container on the Associates lot for more than a day then he will continue to patrol the area to see when the containers [172] move on to Kansas City or the destination that the bill of lading says they are supposed to do. Then sometimes if—he may—if the containers are still sitting there for a period of time get a little suspicious maybe the containers are not going to move. Then he may come back at night, maybe 9:00 or 10 o'clock at night, and he may see a container backed up to the platform.

Well, if the container is moving straight to Kansas City there is no reason for it to be backed up to the platform. And then that is when he becomes alarmed and he checks it out, and keeps a monitor of the time schedule that he is seeing the containers, and the condition they were, and where they were on the lot, and what have you, and he does not have to go on the lot. Doesn't go on the property. He just continues to peruse it until he takes the times and what have you of all of the containers, and what happened to them.

Q All right. If he sees there is a violation, for instance, the cargo is now being removed from the container and even so much as stored in the warehouse of Associates, you gave us the example of Associates, then he makes a report of the violation to whom?

A Makes the report first to the International Vice President, that is me.

Q All right?

Q And then he makes a report to the employer, the [173] steamship line that is his boss.

Q For instance, U.S. Lines as an example?

A Notifies Mr. Mays, who is the Executive Secretary of the Hampton Roads Shipping Association. And then they are placed on notice that we are going to write a letter protesting these containers being in violation.

Q You make your charge. Then who hears whether that is true or not?

A Then we request a container grievance committee meeting. That comprises the representatives of the Hampton Roads Shipping Association and representatives of the I.L.A., and we meet primarily at the shipping association's headquarters.

Q Also U.S. Lines?

A Well, U.S. Lines, if the U.S. Lines containers are in question or the ones that are in violation. U.S. Lines is notified that its eight containers, four containers, whatever, are in dispute and the numbers and the dates and what have you, and U.S. Lines normally will come to the hearing with whatever information it has concerning these containers.

Q All right.

Then the committee decides whether or not this particular container had been handled against and in violation of the joint container rules; is that correct?

[174] A If the evidence supports that the container that was supposed to move on a shipper's load, as we call it, directly outside of the 50-mile radius to a beneficial owner or a manufacturer on a manufacturer's label that the container was not sent to the destination as the bill of lading said that it was going to be sent. In fact, then it became a violation if the container was stripped by anybody other than the beneficial owner that the bill of lading said or the manufacturer. It was determined a violation.

If the container inspectors could prove that these containers were stripped at the truckers' headquarters and loaded into his own equipment or something else done with it, then the committee in itself, after listening to all the testimony, just like a court hearing, would make a decision. And it would decide jointly whether or not it was a violation or it was not a violation.

Q So the joint committee of the Shipping Association I.L.A. makes a decision and levies a fine on the particular shipowner; is that correct?

A Or the penalty.

Q Mr. Billups, going first to the original negotiations for the container rule, during the entire negotiations for the container rule and even from that date until the present day, was any discussion had between the I.L.A. and the Shipping Association as to whether or not these

[175] truckers, the railroad organization, or anybody else that handled these containers, whether or not they had any right to interfere with the shipowners' property, which is the container, or there was any permission given them so far as they are concerned, to violate your work jurisdiction. Any mention at all made of any third party in this?

A We weren't concerned with the truckers. We weren't concerned with anybody other than those that we had a contract with. The Shipping Association entered into a contract with us. We had waived certain very dear privileges of handling all of the cargo, because of economic reasons, we had agreed to permit the cargo to move with one consignee outside the geographical area without us handling the cargo at all. And it wasn't our responsibility to go after the truckers or anybody else. We also went after the shipping line who had said at that time if he had the containers and the containers were moving on a single bill of lading that he would see to it, his responsibility, to see to it that the container was properly documented and that it would go to its ultimate destination as the agreement prescribed.

Q In other words, the shipowner took the position that this box was his property and he could control it until it got to where it was going, and he agreed to do this with your contract; isn't that correct?

A The steamship line had reserved the right [176] whether to release the box to a trucker or a consolidator or anybody else, if these rules were in effect. He would decide whether or not he would release it. We had had many cases where the shipper knew that the box was going to be used in violation of the contract and they would not release the box. They would call us and ask us if they could send a box to a consolidator, a consolidator had cargo he wanted to load at his station. They would call and find out if they would be in violation. Well, based on the contract the committee would rule it would be a violation and they would not release the box. So they have control of their box.

Q The violation that you all have had of your work rules there, container rules since 19—what is it 1969, have always been those which the shipowner or shipping

agent claimed that he had no knowledge of beforehand, isn't that true?

A That is right.

Q In other words, the shipping agent when he released this box, he, in good faith, believed that the box would not be handled in any way to subject him to a penalty under your contract with him; isn't that right?

A In the U. S. Lines' case with the boxes that Associated stripped, U.S. Lines says, "I can't believe that that is being done."

And Mr. Merritt told Mr. Queen, "well, if you come over [177] here you will see they are being stripped, the boxes are supposed to be gone to Tennessee or somewhere. I don't know the direct destination but they were supposed to be gone, if you come over you will see the trucker is stripping these boxes that is moving on a shipper's load outside a 50-mile area in violation of the contract."

Mr. Queen came over and that is what has already been testified here today and that is when Mr. Merritt went on the property. Never went on the property until Mr. Queen got there because Mr. Queen was the one that had the agreement with the trucker not the I.L.A., so Mr. Queen did the talking. And he went on and they looked and they saw the box had been stripped.

Q So you are convinced from your experience on the container committee and the violation committee that the shipping agencies and the shipowners whom you had a contract with had no prior knowledge of what any of these truckers were going to do to affect the boxes before they did do it; isn't that right?

A They had no knowledge. As far as we know they have always said they didn't know and we believed them.

Q Now did you in any way—did the I.L.A. in any way agree with the shipping association or any of the members, the U. S. Lines or anybody else, to help them try to collect the fines from whoever subjected them to fines. Did you have [178] anything to do with that? I know it is absurd.

A We had a contract with the steamship lines, the lines knew that the boxes had been stripped in violation

of the contract. And they agreed to pay the penalty without a fight with the union. That is where our responsibilities ended. We were finished with it. We had nothing to do with whatever the steamship line wanted to do for getting his money back or whenever he wanted to go after, that was not our business at all.

As far as we were concerned if he never asked to get the money back and as long as he paid what the contract said he should pay, we were satisfied.

Q Right from the beginning, Mr. Billups, did the I.L.A. protest every violation it was possible for them to find out about?

A The I.L.A. rigidly patrolled the container contract in this port. We never gave up on the 30-day warehousing clause—one of the last to give up on the 30-day warehousing clause, and it was the Dublin Rules that forced us to give up on the 30-day warehousing clause. Prior to the Dublin Rules we stripped all full loads, what have you that was not going to the beneficial owner's house or the manufacturer label. Prior to the Dublin Rules there was no 30-day warehousing clause in the port of Hampton Roads.

Q Had the I.L.A. ever made any demands, written [179] any letters, in any indirect or subtle way attempted to take any action against any trucking association that have charged us with this unfair labor charge?

A No, we have always been friendly with the truckers. I know some of the truckers who own the places and I see them and they speak, how are you, Billups, and so on. We never had any quarrel with the truckers at all.

Q There had been no controversy at all then?

A Never.

Q Has there ever been any—in reporting the violation to the shipping association, has there ever been any intent or object on the part of I.L.A. to get any work which the truckers themselves were doing?

A Only thing the I.L.A. had tried to do is to protect the work that we have traditionally done as best that we could. That is all. To try to protect that work that we had traditionally done.

* * * *

[181] Q In fact, you were in New York when we came up with a revision of the container rules in 1968; were you not?

A Yes.

Q Did we have a strike of some 57 days at that time?

A Yes.

Q Do you know what the cause of that was in 1968?

A Well, I think it was containers. Right, offhand I can't put my finger on the direct cause.

Q Do you remember on the Policemen's Holiday at the Sheraton Motor Inn in New York where committees were arguing, fighting, scraping and hollering, with respect to drafts of proposals sale given by the I.L.A. on the one hand and the New York Shipping Association on the other?

A Yes.

Q Now do you remember, also, that the Presidential Board of Inquiry in the city, determined that one of the primary causes of the strike by the U.L.A. in 1968 was the issue of containerization?

A Yes, I remember that.

Q Do you remember back in 1957—

THE COURT: He remembers everything you remember that is funny.

BY MR. LAMBOS:

Q You will remember in '57, when the first [182] Atlantic ship came into New York, in the prior year that one of the big issues that caused a strike of some 50 or more days then were the demands of the I.L.A. with respect to job protection from the impact of containerization; is that not so?

A That's right.

Q Has not the question of containerization been a major subject in the discussions and disagreements between the various shipping association and the I.L.A. from 1957 right up to the present time?

A I am sure that is what it has been.

Q Isn't it also not a fact that after the 1968 negotiations in New York, you came back to Hampton Roads

and agreed almost precisely to the rules arrived at in the New York negotiations for the Hampton Roads area?

A Yes, we did.

Q And is it also not a fact that thereafter these rules were applied in Hampton Roads, in New York, Boston and Philadelphia, and Providence and in all of the North Atlantic ports?

A Yes.

Q Is it also not a fact, Mr. Billups, that from the beginning of the development of these rules that the I.L.A. in Hampton Roads complained not only in Hampton Roads, but also in International Headquarters and at New York Headquarters with respect to the very point which is at issue [183] here, and that is the attempt by truckers to strip containers within the 50-mile limits, where those containers were consigned to points outside the 50-mile limit?

A Truckers and consolidators.

Q Was this not the subject of meetings between the Hampton Roads Shipping Association and the I.L.A. in 1969, 1970, 1971, 1972, 1973, 1974 and 1975.

A Right.

Q And in all of these cases were not determinations made in each of these instances they were violations?

A Right.

Q And were not these joint determinations reached by both the employer and the union representatives?

A Right.

Q And if I were to take you through the minutes of the Hampton Roads Shipping Association grievance committe on containers, and which also indicates various correspondence between the two parties, would this not also indicate that there were many instances where truckers' containers were held to be in violation?

A Right.

* * * *

[185] Q Could you tell us what the uniform determination of the CONASA I.L.A. committee meeting in each of the cases where the subject was discussed was?

A The subject was the preservation of the contract that was negotiated between the two parties and the pur-

pose of the container rules was to preserve the traditional [186] work jurisdiction of the I.L.A.

We had a case before CONASA Committe, as you know, out of Hampton Roads, concerning some 23 or 24 Dart Line containers that were stripped by trucker, not taken to its destination, stripped by trucker, 24 of them and Dart Line paid. Whether Dart Line tried to recuperate or get that money back from somebody else we don't know. We weren't concerned with that. But it was ruled by the Joint CONASA Board that the containers should have gone to destination or the beneficial owner as they were, bill of lading described.

Q This had been the uniform determination in all of these?

A In all of the ports, right.

Q Thank you.

THE COURT: You may cross-examine.

CROSS EXAMINATION

BY MR. ROSENSTEIN:

Q Mr. Billups, you mention in your direct testimony that containerization commenced in 1965 or 1966 in the Hampton Roads area; is that correct?

A Containerization, as we know it now, was born in Hampton Roads around '67 or '68. I thing our first containers crane was erected in '68. Somewhere around '68 or '69.

* * * *

[187] MR. ROSENSTEIN: I move to strike that answer and ask the reporter to read the question because it was not answered.

THE COURT: Well, it is just the last portion of it, [188] I think, is the appropriate one to be stricken. The question was in 1965, there was no container agreement and I take it that it follows that they did not strip them. Isn't that what you meant to say?

THE WITNESS: Yes.

* * * *

Q In 1965 and 1966, when a motor transport carrier went down to the pier area, he picked up a full shipper's load intact; is that correct?

A Well, if he picked it up and it was destined for a beneficial owner, we assumed he carried it to the beneficial owner.

Q I.L.A. labor did not strip a full shipper's load in 1965 and 1966; is that correct?

A Except if we were requested.

Q How were you requested?

A If it was a container—if they wanted it stripped, they would instruct us to strip it.

Q But for containers destined to a beneficial owner or consignee outside the 50-mile radius, I.L.A. labor did not strip those containers at the pier; is that correct?

A That is right.

THE COURT: Was it material at that time whether it [189] was outside the 50-mile radius or not?

THE WITNESS: At that particular time we did not have—we had not realized containers in port of Hampton Roads and we did not have written into our contract the 50-mile radius clause.

THE COURT: It was not material as to where it was going?

THE WITNESS: Right.

THE COURT: You only stripped it if you were asked to strip it?

THE WITNESS: Right, yes.

* * * *

Q Who would request you to strip it?

A The shipping agent or the stevedore. If the stevedore said we have this full container load that we want [190] stripped, we strip it.

Q That would have been at the direction of the consignor or consignee, correct?

A Well, I don't know about the consignee at that time. It would be a direct order from the stevedore—that is who we were working for—the stevedore would instruct us that that box had to be stripped and we stripped it.

* * * *

[199] A The U. S. Lines had two 20-foot containers that were released to McLean Trucking, they were destined to go outside a 5-mile area, and McLean took the two to

his facility and transferred the contents into his own equipment and took them on wherever they were supposed to go and U. S. Lines paid the fine for that?

THE COURT: This was prior to Associated?

THE WITNESS: Yes.

BY MR. ROSENSTEIN:

Q Can you tell me—this you believe was a full shipper's load; is that correct?

A Loads destined to a benficial owner outside a 50-mile area.

Q Was that a full shipper's load?

A Well, we considered it a full shipper's load. It was one piece destined for the beneficial owner on a through move.

Q Isn't it a fact in that case that McLean took that specific—or those containers to its Richmond facility and stripped them there?

A I think we discussed whether they were stripped at Portsmouth or at Richmond. He said he stripped them at Richmond. We said he stripped them at Portsmouth.

Q Do you have any proof they weren't stripped at Richmond?

[200] A Well, in any case, the containers did not go to the assigned consignee that the trucker had discharged the containers and put it in his own rigs and carried it in his own equipment.

Q All right.

Here at Page 69 of the 1974 agreement. On Rule 2, "Containers to be loaded or discharged by I.L.A. labor. All cargo loaded in containers outside the geographic area and on import cargo, all cargo discharged from containers outside geographic area." Isn't the Port of Richmond more than 50 miles away from the port area in Hampton Roads?

A Where are you reading from?

Q Page 69, A export cargo number one and B, import cargo number one.

THE COURT: The question is, isn't the port of Richmond more than 50 miles from the port of Hampton?

THE WITNESS: Yes, the port of Richmond is more than 50-miles from the port of Hampton.

BY MR. ROSENSTEIN:

Q Isn't it a fact from your own contract that you have given up the right of I.L.A. labor to strip containers outside of a 50-mile geographic area of the Hampton Roads port?

A If the container is consigned to a consignee to go to a direct consignee owner through shipper's load, we have [201] been notified under the documentation that the container is moving on a shipper's load. We expect the container to move to the single consignee at the manufacturer's place or at the beneficial owner's place, and not the container go just outside the 50-mile radius and be stripped and brought back into the terminal. We consider that a violation.

Q Well, Mr. Billups, tell me where in your contract it states that if McLean had a facility in Richmond, Virginia, that they specifically would have to strip it in Portsmouth rather than in Richmond. What precludes McLean from stripping it in Richmond? Where in the contract does it state that?

A He never proved to us he did strip it in Richmond.

Q I ask you where in the contract does it state that McLean could not strip in Richmond, Virginia?

A The question that our contract deals with is the container that is going to a beneficial owner, if the container does not go to the beneficial owner, we consider it a violation.

Q Even though outside the 50-mile geographic area, which you specifically exempt in the contract?

A We expect the container to go like it is. We gave up the right to strip the cargo from the container based on the fact that container was going to be stripped at its [202] ultimate destination by the consignee, receiving it at his house. That is what the contract called for house-to-house move.

Q Don't you want to go further, doesn't it have to be more than 50 miles away?

A Well, consignee's place can be inside a 50-mile radius as well as outside the 50-mile radius. If the beneficial owner has a plant and it is inside the 50-mile, we stil permit the container to move free. It could be G.E.

right here at Portsmouth and the container will go direct to G.E. plant and his own employees will strip the container or load the container. If it is outside 50 miles and the container is moving on a house-to-house move based on our contract, and it is going to a consignee and he is outside 50 miles then the container, we expect, the documentation says the container is going to the consignee, that the container would go to the consignee and we would strip the container with his own employees.

* * * *

[208] Q With respect to the containers that you have stripped, didn't you get $2 a ton for that?

A Yes, we would.

Q Also for the Pilot and the Thurston Motor Line containers, you get $2 a ton for that?

A Yes, because they were destined for single consignees outside 50 miles.

* * * *

[210] Q On Page 4 it says third paragraph "Mr. Vandeventer commented it seem to us that you are being unfair if you are stuffing and stripping cargo in a public warehouse in New York and you won't let D.D. Jones do it here."

You testified in New York that the same rules applied in New York as they did in the Hampton Roads area.

A I said, "As the Dublin Rules are written at this point in time we had no public warehouse written in this contract, anywhere in any of these contracts," that is something you sure can't find in there. There were no public warehouses, no 30-day clauses or nothing else, all we had in this contract was that the cargo was destined for a single beneficial owner, when it moves under that criteria that the cargo must go to the beneficial owner to avoid being stripped by Lonshoremen. And when the container load of Tuna Fish was taken it was destined for beneficial owner and it was taken to D.D. Jones' warehouse and stripped, it was in violation of that though moved on a beneficial owner's criteria.

* * * *

[216] A It does not state specifically that the seal can not be broken, but it does state at that time the exemp-

tions of a container being stripped by I.L.A. labor is a container that is moving a full shipper's load to a single consignee. If the container goes to a trucker's warehouse it loses that identity. It loses that identity of being a through container.

If it goes to a trucker's warehouse to be stripped then it loses the intent of the agreement that was made that says, "Lonshoremen, you give up your right to handle this cargo box by box, piece by piece, there is 30 tons of it in the box, but it is going straight to this man's house and he is going to unload it there, receive it there and take it out himself and you—we will give you a royalty on that to protect some of your man hours and your fringe benefits. But you let this box move through," and we do that.

Now, if that box don't go there, if it goes to a trucker's installation and he strips it, and does anything else with it other than the intent of the container it lost that identity.

Q So in actuality you want to deep sea I.L.A. labor to be able to do the work that Associated employees or Houff employees are now doing.

A No, no.

[217] MR. KELSEY: Only the court can draw such a conclusion.

THE COURT: Well, let him answer, he said that is no.

THE WITNESS: No, no, no. The only thing the contract set forth is to primarily protect a portion of the work that we have traditionally done. We did it all up until containers came. We did 100 percent of all of the work that came in the port. We unloaded every piece of steel, everything. We unloaded it piece by piece. Then when containers came in and we got certain exemption rules that gave certain containers the right to move our installations or from the installations in the port that we don't handle the cargo box by box, it goes straight through to the consignee. The man that owns the cargo, says, "sell it to my house in fact with the seal and everything there," all right, we give up—we permit that to happen with the royalty.

Now, as far as we are concerned it was the truckers' responsibility to handle that cargo. It was our responsibility to handle cargo if it was going to be hand or taken out of that container and it was not going straight through in fact to the beneficial owner, then we feel we should have taken it out of the box. If it had to be put in another cargo for some reason, it had to be loaded or something else, traditionally we have also loaded the trucks. So we could have taken it out of the container right there at [218] the pier and loaded it in the truck and then they could have carried it in there, could have stopped along side the road and put a box down and rode 50 more feet and put another box down, we wouldn't have bothered.

BY MR. ROSENSTEIN:

Q What gives it the right I.H.A. to tell the motor transport carrier how they should proceed with operations?

A We are not telling the motor transport operator, haven't said a word. Not one on them can say that I or any of my employees ever told them how to conduct their business. The only thing we are trying to do is implement a contract that was set down and negotiated in good faith between two employers. We sat down and negotiated dealing with the employers' equipment, the unloading of ships, the expedition of ships in and out of the port, the turnaround and the movement of the cargo. We negotiated with him. When he agrees that he would control and see to it that the contract was lived up to, that the container would go where he says it is destined to go. When it didn't go we went back to him not the trucker.

* * * *

[224] Q What do the I.L.A. freight handlers do?

A Freight handlers, they unload break-bulk cargo from trailers.

Q Aren't they involved at the pier area?

[225] A They weren't involved in containers.

Q I see.

A At all.

Q Is it not a fact under the 30-day warehousing section that it took less time for the cargo to finally get the warehouse than it did during the suspension of the rules themselves?

A Run that one by me again.

Q Didn't it take longer to finally get the cargo to public warehouse during the suspension of the rules than prior to the 30-day warehousing suspension was in effect.

A You would have to ask the steamship line or somebody else because I wouldn't have the answer to that.

Q Isn's it a fact that you had to, during the suspension, go throug opening seals of the 20-foot containers, taking that cargo out and storing it in your own warehouses; isn't that what you did?

A Well, if the cargo—what we did, we stripped containers at the pier when required, some of the containers we didn't strip, they put them in storage or let them stand by until later. I can't say whether it was faster or slower.

Q Isn't it a fact, Mr. Billups, under the 30-day warehousing section to be in your contract that the container went directly in fact without the seal being broken to a public warehouse such as D.D. Jones?

[226] A With the 30-day warehousing clause, yes.

* * * *

Q Wasn't one of the reasons that you suspended the rules on containers that you wanted to re-acquire that type of work break-bulk type of work?

A Not necessarily so. The reason the rules were suspended is because there was widespread misdocumentation of containers documented to go into warehouses under the criteria of normal warehousing going in one door in the morning and out the other door in the evening, that type of thing. The whole basis of the 30-day warehousing clause to permit such public warehousing was that in normal course of the public warehouses [227] business as it had been entered presented that if he was warehousing cargo then a normal stay of warehousing once again you are picking a normal circumstance 30-day just like you pick a normal dimension of 50 miles it may stay there 30 days but it said under normal circumstances cargo would stay a minimum of 30 days and could stay as much

as 6 months then that is warehousing but to take it in the front door and out the back and call it warehousing that is consolidated and we were having a lot of problems with that and so under the contract we suspended the rules until we could get a clearer understanding of the documentation so we would know what we were doing.

* * * *

[232] ALVIN MERRITT

was called as a witness and, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GLEASON:

Q What is your occupation?
A Container inspector for the port of Hampton Roads.
Q How long have you worked that?
A October 1, 1969.
Q And what did you do prior to that time?
A Longshoreman on the piers.
Q For how many year?
A Since 1956.
Q Could you tell us what your duties are as a container inspector?
A To protect the work jusisdiction of the I.L.A. and inforce its container contract.

* * * *

[234] Now, if a container was to be destined for Richmond, Virginia and was a shipper's load, and that container went to [235] a trucking company, and the trucking company stripped that container, would that be a shipper's load?

A No, it would not.
Q Why?
A Because it did not go to the ultimate consignee direct intact.
Q Now, how would you find out that that container did not go to the ultimate consignee?
A By policing the trucking companies and one finds the container there, go back to the piers or call the com-

pany and find out when did that particular container leave the terminal. If it lists say, I have it left at 2 o'clock going to Tennessee and we see it at 4 o'clock and we get the delivery on the box. We have a suspicion maybe they will be stripped then we put a special policeman on the thing. We will watch it constantly twice a day, sometimes at night. After we document this and once the box is returned, I see in maybe a day or so when we know definitely the box did not go to Tennessee.

Q There was reference about McLean Trucking; did you hear that?

A Yes.

Q Are you familiar with the facts in this case?

A Yes.

Q Could you explain what happened?

[236] A Well, I am going back a long way now.

Q When did this happen?

A '71, '71 something like that. The box left the terminal, I say at 3 o'clock. It was interchanged from N.I.T. at 3 o'clock. And during my policing I spot the two boxes I say around 5:00. In checking the two I find they are empty. So I take the numbers down and go back to the terminal and get the interchange and the delivery order. In this case these containers were destined for Decatur, Illinois. Now, I know in two and an half or three hours it can't go to Illinois and back.

Q Could they go to Richmond, Virginia?

A No, no way. And not be stripped and return to Portsmouth so what we do then, we, oh, I come back to the office, write it up as a violation. And it is signed it was then signed by International Vice President. And the letter goes to the Association and they grant you a meeting. I present the facts and then I leave the room and the committee agree or disagrees whether or not it is a violation.

Q Now, over the period of time since you have been investigator how many violations have you reported with reference to shipper's loads that were supposedly to be shipper's loads and were stripped?

A The number that I found?

Q How many would you say?

[237] A Well, 50 or 60, maybe 70.

* * * *

CROSS EXAMINATION

[241] Q The crux of this entire matter, as you state, is if a motor transport carrier strips this container at his facility within a 40-mile area of a port area and it does not go directly to the consignee then that is a violation of your agreement?

A Because then it is not a shipper's load.

* * * *

[250] Q You stated on direct there were—you reported since October 1969, 50 to 60 violations?

A In that neighborhood, I didn't say precisely.

Q Do those relate specifically to full shipper's loads?

A It is not a shipper's load if it is stripped without going to the strippers' premises and I would say those containers do contain—that in those instances, right.

Q Can you break it down for me? Prior to its being stripped how many full shipper's load were there that you initially reported violations on?

A I would have to go back to the record.

Q Isn't it a fact that in the minutes that all of the violations that you allege would have been reported in the I.L.A. containers' committee minutes between 1969, when you start, and 1974 and 1975?

A Every violation is on record.

Q Right.

And if there were going to be 50 or 60 violations they would all be contained in the minutes; is that correct?

A Definitely, ever last one of them.

Q Isn't it a fact that in those minutes it specifically talked about violations with respect to containers going into public warehouses?

[251] A Prior to the Dublin agreement that was a violation of our contract.

Q But that is not a full shipper's load, is it?

A Definitely. They were on a consignment to a full shipper's load and had it gone to the shipper's premises we would have not have touched the box.

* * * *

THE WITNESS: To my recollection the only violation that I ever found was one with D.D. Jones concerning some tuna fish. Now as far as assessing fines with D.D. Jones, we have no other fines with them.

[252] BY MR. ROSENSTEIN:

Q To the best of your recollection, how many separate motor transport carriers who were carrying shipper's loads destined to a point more than 50 miles to a beneficial owner, were reported as violations?

A Pilot, Thurston, Associate, McLean, and maybe several others.

Q Does that add up to 50 or 60?

A When I say 50, I am not talking about 50 or 60 companies, I am talking about 50 violations.

Q So you are telling me about 50 or 60 containers?

A Right.

Q The party that you just mentioned, Associate, we had determined that that took place in September of 1974, when the violation took place?

A There were prior violations with Associate when they were out on Popular Haul Road.

Q When did that take place?

Around '71 or '72.

Q Did you fine U.S. Lines?

A Yes.

Q Did U.S. Lines pay those fines?

A Yes.